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AERIAL JURISDICTION.[1]

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As a legal concept jurisdiction may be considered the right to exercise state authority. Story says that it may be "laid down as a general proposition that all persons and property within the territorial jurisdiction of a sovereign are amenable to the jurisdiction of himself or his courts; and that the exceptions to this rule are such only as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations, and to regulate their intercourse in a manner best suited to their dignity and rights." (Santissima Trinidad 7 Wheat. 354) It is fully recognized that all land and the marginal sea, to a distance of a marine league at least, is subject to territorial jurisdiction and that the open sea is not within the jurisdiction of any state though vessels sailing upon such seas are within the jurisdiction of the state whose flag they rightfully fly. As Story says exceptions to this rule of exclusive jurisdiction are such "as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations, and to regulate their intercourse, in a manner best suited to their dignity and rights."

[1]A paper read before the American Political Science Association at St. Louis, December, 1910.

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The rights of the owner of land in the atmosphere above the land are stated in the codes of various states and in decisions of courts. Some of these rights were recognized in ancient times when the principle of state authority was not so fully developed. Individuals building out into the sea or up into the air were secured in exclusive enjoyment of the space actually occupied (D. 1. 8. 6.). At the present time the old maxim *cujus est solum ejus est usque ad coelum* is subordinated to the paramount public interests as is shown in many domestic cases involving trespass, damages, nuisance, public well being, etc.

The Japanese Civil Code provides, "207. The ownership of land, subject to restrictions imposed by law or regulations, extends above and below the surface." (Löwholm Translation). Other codes have provisions to somewhat similar effect. (Code Civil Suisse, Art. 667; Dutch, Art. 626; Spanish, Art. 350; Austrian, sec. 297; Hungarian, Sec. 569; Italian, Art. 440; Portuguese, Art. 2288; German, Arts. 905, 906.)

While the rights of private persons in the air have received considerable definition, aerial jurisdiction and the right of state as against state have only recently become of such important practical significance as to attract international attention.

The opening words of M. Millerand, the French Minister of Public Works on May 18, 1910, at the International Conference upon Aerial Navigation, show the rapidity of change in subjects which engage international conferences. He said, "Messieurs, Huit mois ne se sont pas écoulés depuis que j'avais l'honneur, ici même, de clôturer les travaux de la première Conférence internationale sur la circulation des automobiles, et je prends aujourd'hui la parole pour souhaiter la bienvenue, au nom du Gouvernement de la République, aux members éminents de la premiére Conférence internationale de navigation aérienne" (37 Clunet. J. D. I. P. 987). The French Government presented to this conference a series of propositions as bases for discussion. These prescribed the method of determining the nationality and identity of the airship, for licensing aerial pilots, for general prohibition of

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the carriage of arms, explosives, photographic and radio-telegraphic apparatus, for general liability to local authorities, that military and police airships could cross the frontier only after permission and that other public airships should be assimilated to private airships though no airship should enjoy exterritoriality. The problems before this conference were not settled and adjournment was taken to November 1910, but at this time some powers were unwilling to participate and adjournment *sine die* took place.

The propositions which had been presented to the Institute of International Law in April 1910 were also placed before this Conference. That of M. Fauchille said "Art. 7. La circulation aérienne est libre. Neanmoins les États sousjacents gardent les droits nécessaires à leur conservation, c'est-a-dire à leur propre sécurité et a celle des personnes et des biens de leurs habitants." He also proposed in regard to airships that they be divided into public and private and the public airships might be military or civil. Each should have a nationality and identity which should be made known. Airships might be excluded from certain zones as from that of regions of fortifications which regions should be made known. Navigation of the air above unoccupied territory and above the open sea was to be free. In international navigation, dangerous articles and prohibited goods were not to be carried on airships. Acts on board the airship were to be within the jurisdiction of the state to which the airship belonged; while acts taking effect outside the airship are under jurisdiction of the state within which the airship may be when the act takes place. Public airships would so far as possible be exempt from local jurisdiction. (17 R. D. I. P. 163 Mars-Avril 1910)

M. von Bar submitted a proposition to the Institute which also came before the Conference. He considered airships under jurisdiction of their own state so long as they remained in the air, though liable to the territorial law for any act that might take effect outside the airship. When it is not clear whether the act is criminal or civil the law of the state of the airship prevails. The propositions of MM. Fauchille and von

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Bar were in many other respects supplementary. Both show how the agreement upon principles of aerial jurisdiction is progressing.

The First International Juridical Conference for the Regulation of Aerial Navigation held at Verona from May 31 to June 2, 1910 adopted resolutions looking to the approval of much of the work of the Paris International Conference on Aerial Navigation. It maintained that the method of establishing the nationality of airships should be clearly defined inclining to the position that the nationality of the owner should determine the nationality of the airship, that the airship would be liable for damage caused by landing and that landing places might be prescribed. The conference regarded the aerial space above the open sea and above unoccupied territory as free; the atmosphere above the territory and the marginal sea of a state as under the jurisdiction of the subjacent state. Within the aerial domain of the state and subject to the necessary police and like regulations, the navigation of the air would be free. The airship with its persons and goods, save for police and like regulations, would be under jurisdiction of the state to which it belongs. (17 R. D. L. P. 410).

International aerial navigation has already become a subject of domestic administrative regulation. The French Minister of the Interior issued a circular to the local officials on March 12, 1909 prescribing a method of action in case of landing of foreign balloons within their respective territorial divisions.

12 Mars, 1909.

Monsieur le Préfet,—La fréquence des atterrissages de ballons étrangers en France a amené le Gouvernement à s'occuper de cette question. Il a été reconnu que ces ballons étaient soumis au payement des droits de douane et il a été décidé en conséquence qu'il y avait lieu en pariel cas, de prendre les mesures suivants:—chaque fois qu'un ballon étranger descendra sur le territoire français, les maires, commissaires de police ou commissaires spéciaux devront vous en informer et prévenir sans retard les agents du service des douanes, s'il en existe dans le lieu

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d'atterrissage, ou, à leur défaut, les agents des contributions indirectes, afin d'assurer la perception des droits de douane. Le ballon devra être retenu jusqu'au payement des droits.—D'autre part, les aéronautes seront tenus de décliner leur nom, prenoms, qualité et domicile. Si ce sont des militaires, ils devront indiquer le grade qu'ils occupent dans l'armée ainsi que le corps ou les services auquel ils apparteinnent.—En outre, les maires et les commissaires de police devront s'assurer que l'ascencion a été entreprise dans un but purement scientifique et que les aéronautes ne sont livrés à acune investigation préjudicable à la sécurité nationale.—Vous aurez soin de me transmettre ces renseignements par la voie télégraphique en m'avisant de l'atterissage du ballon. Je vous prie de porter à la connaissance de MM. les sous-préfets, maires et commissaires de police les presentes instructions dont vous voudrez bien m'accuser réception.

Le Président du Conseil, ministre de l'intérieur,

G. CLÉMENCEAU.

In 1909 also the opinion in Denmark seemed to be that a German balloon had no right to establish in Denmark a station from which to proceed to the North Pole, and it was maintained that a state had a right to forbid airships access to any part of its territory if it judged such access prejudicial to the national interests. (16 R. D. I. P. 673, Sept.–Oct. 1909.)

There is also an undisputed legal right to regulate the movement of persons approaching fortifications whether they approach by land, water, or air.

The use of the wireless telegraph has also been subject to national and international regulation. The United States courts have declared that the national government has jurisdiction over the atmosphere in matters which affect the general well being and national interests.

In the case of the Pensacola Telegraph Company *v.* the Western Union Telegraph Company, 1878, Mr. Chief Justice Waite in delivering the opinion of the Supreme Court of the United States said, "Both commerce and the postal service

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are placed within the power of Congress, because, being national in their operation, they should be under the protecting care of the National Government.

"The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth." (Cited also in Western Union Telegraph Company *v.* State of Texas, 105 U. S., 460). The power of Congress would similarly extend to aerial navigation.

Mr. Justice Holmes (1908) says of the development of the idea of demarcation between public and private rights in the atmosphere, water, etc., "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. The limits set to property by other public interests present themselves as a branch of what is called the police power of the state. The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side. For instance, the police power may limit the height of buildings in a city, without compensation. To that extent it cuts down what otherwise would be the rights of property. But if it should attempt to limit the height so far as to make an ordinary building lot wholly useless, the rights of property would prevail over the other public interest, and the police power would fail. To set such a limit would need compensation and the power of eminent domain.

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"It sometimes is difficult to fix boundary stones between the private right of property and the police power when, as in the case at bar, we know of few decisions that are very much in point. But it is recognized that the State as quasi-sovereign and representative of the interests of the public has a standing in court to protect the atmosphere, the water and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned." (Hudson Water Co. *v.* McCarter 209 U. S. 349.)

Mr. Justice Holmes in 1907 also said, "It is a fair and reasonable demand on the part of a sovereign that the air over its territory should not be polluted on a great scale by sulphurous acid gas, that the forests on its mountains, be they better or worse, and whatever domestic destruction they have suffered, should not be further destroyed or threatened by the act of persons beyond its control, that the crops and orchards on its hills should not be endangered from the same source," Mr. Justice Holmes also affirms that a commonwealth of the United States "has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air." (Georgia *v.* Tennessee Copper Co. 206 U. S., 230.)

The Berlin Agreement of 1903 and the Berlin Convention of 1906 in regard to Wireless Telegraphy assume for the more important states of the world that jurisdiction over the atmosphere resides in the subjacent states.

The Hague Conventions have prohibited by international agreement the launching of projectiles from balloons, bombardment "by any means whatever of towns, villages, habitations, or buildings which are not defended," and unneutral use of the radiotelegraph.

A recent dispatch, December 20, 1910, announces that Italy proposes that by agreement by joint note the powers of the world prohibit in time of war all firing from and arming of aerial ships, limiting their use to scouting and observation purposes only.

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It is evident from the regulations issued by state authority, from decisions of courts, from codes and other expressions of state officials that states assume that they have jurisdiction in the air space above their territory.

The ideas in regard to the limits of aerial jurisdiction set forth by those who are giving special attention to this subject are not, however, in accord. It is natural that one group should maintain the ancient doctrine that "the air is free." Another group maintains that the domain of the air is exclusively in the subjacent state. A third group, between these, maintains that a certain zone of atmosphere above a state is within its jurisdiction, and beyond this the air is free. The height of this zone of jurisdiction is, however, a subject of considerable difference of opinion. Some think that the height of the zone can be determined in a manner analagous to that of determining maritime jurisdiction. Some see unsurmountable difficulties in the use of this analogy. Of those who favor a zone theory some propose that the zone be determined by the limit of vision; some that the limit of effective control by arms be the determining factor; some that an arbitrary limit be agreed upon by the states of the world; and others advance other propositions.

It is evident that the claim that the aerial dominion should be regarded as analogous to maritime and that what is allowed in the marginal sea be allowed in a marginal zone of air and what may be done on the high sea may be done in the aerial space above this marginal zone cannot be well sustained. While in time of war a battle between fleets upon the high sea might not endanger any neutral, a contest between their aerial fleets in the high air might result most disastrously to the subjacent neutral. In any case while the force of gravity remains and until further means for counteracting its operation are devised, a neutral state cannot be expected to submit to the risks of such use of the air. A warship upon the high sea when disabled may sink to the bottom without peril to the nearest neutral. From a battle in space above a neutral the descent of the disabled airship, possibly with a load of

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explosives, would certainly be with peril to the neutral. The perils to innocent neutrals because of war upon the high sea may be exceptional and almost negligible. The perils to innocent neutrals in case of war in the high air above neutral territory would be certain and grave. Indeed the perils to those who by the modern laws and customs of war are not liable to undue risks even within enemy territory, would give good ground for a question as to whether aerial battles even above belligerent territory should not be restricted. If belligerents on the sea may not fight so near the coast that their shot shall fall within neutral jurisdiction it would seem that battles in the air above neutral jurisdiction would be similarly prohibited. This would apply, to the air above land and above the marginal sea as projectiles or disabled airships would by the universal physical law fall toward the center of the earth when unrestrained. As according to the law of physics the velocity would be accelerated in proportion to the distance from which a body falls, it would on a physical basis be no less dangerous to allow a free zone at a considerable height than in a lower altitude. While on the sea it might be generally maintained that the greater the horizontal distance from the adjacent state, the less probability that the act would affect the adjacent state, it could not be claimed that the greater the vertical distance from a subjacent state the less the probability that the act would affect the subjacent state. This distinctly would not be true in case of anything falling from an airship. Similarly in observations of fortifications, photography by telescopic lenses, etc., increase of altitude may within limits give a greater range. Submarine mines for the defense of a state may not be visible from the surface of the water but may be seen from an airship.

It would seem that physical safety, military necessity, the enforcement of police, revenue and sanitary regulations, justify the claim that a state has jurisdiction in aerial space above its territory. This position also seems to underlie established domestic law and regulations, the decisions of national

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courts, the conclusions of national conferences, and the provisions of international conventions.

It would seem wise therefore to start from the premise that air above the high seas and territory that is *res nullius* is free while other air is within the jurisdiction of the subjacent state "and that the exceptions to this rule are such only as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations and to regulate their intercourse in a manner best suited to their dignity and rights," and for these exceptions to the exclusive right of aerial jurisdiction of the subjacent state, international conferences should by agreement immediately provide.

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THE WASHINGTON MEETING OF THE AMERICAN SOCIETY FOR THE JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES.

THEODORE MARBURG.

Although the peace movement is still a movement of intellectuals it is no longer confined to idealists. That fact is amply illustrated by the personnel of the congress held at Washington, December 15–17, 1910, under the auspices of the American Society for Judicial Settlement of International Disputes.

The various groups of practical men in close touch with affairs—legislators, statesmen, educators and business men—who addressed the congress were likewise liberally represented in the crowded and interested audiences of the congress.[1]

The explanation of this change in the personnel of the peace workers lies partly in the fact that the growing waste of armaments has projected this question into the arena of practical politics; partly in the actual results accomplished by certain existing institutions, notably those set up at The Hagūe; together with the manifest need of additional institutions of a simple nature which it is folly to continue without. Among the latter that which in the minds of many men will do more to make war difficult than any institution thus far existing or suggested is a true international court of justice. It was toward the problem of

[1]Among the speakers at the congress will be found the President of the United States, two ex-Secretaries of State, the presidents of three of our leading universities and the president-emeritus of another, an ex-governor of Virginia, the governor-elect of Connecticut, former members of our own diplomatic service, the heads of three important foreign legations at Washington, present and former members of Congress, and several men foremost in American industry and commerce.

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such a court—to supplement, not to supplant, the existing Permanent Court of Arbitration at The Hague—that the attention of the Congress was mainly directed.

The chief aim of the society was declared to be an international court which shall be permanent and shall be composed of judges by profession as distinguished from the present tribunals of arbitration which are temporary and are composed only partly of judges and partly of diplomats and statesmen not necessarily trained in the law. . . . "We believe the mere existence of such a court will attract cases . . . that public opinion will compel the submission of the case when and as it arises . . . that the judgment of the court, based upon law, will meet with ready and universal acceptance . . . and that the resultant peace will be permanent because just and because based upon law and its just interpretation."[2]

The great usefulness of the existing Hague conventions, particularly the Permanent Court of Arbitration, was freely and repeatedly acknowledged during the conference. Attention was called to the Affairs of Venezuela (1904) and to the Casablanca affair (1909) in which acute situations, the one involving national policy and the other supposedly involving national honor, were cleared up by submitting the cases to the Hague Court; and to the Newfoundland Fisheries dispute between Great Britain and the United States, a case which diplomacy had vainly attempted to settle for the greater part of a century and which the Hague Court disposed of in a few weeks (1910). Especial emphasis was laid on the fact that the very existence of the Hague Court is "an international question-mark whenever national passions are excited. If a nation smart under a sense of injury and would seek to avenge itself upon another nation and slay multitudes of men innocent of the sins or offenses of the few who happened to be in power or to be the provoking agents, the query arises in the minds of increasing thousands whether the trouble ought not to be

[2] J. B. Scott.

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judicially adjusted under a provision of the Hague convention; and the inability to give a negative answer, or the inability on searching self-examination to justify one's revengeful attitude, alike tend toward peace. Thus the Hague conventions are bringing about a state of mind . . . which makes war hard and peace easy."[3]

The fertile mind of ancient Greece to which the world owes so much in the field of politics, was not dead to the advantages of arbitration.[4] Arbitration was practiced between the Greek states, and the King of Sparta is credited with the observation that it is impossible to take as a transgressor him who offers to lay his grievance before a tribunal of arbitration. Rome rejected the institution because she regarded herself as "the sovereign of the world" declining to accept other nations as her equal. In the middle ages the Pope not only was instrumental in having arbitration clauses introduced into treaties but boldly assumed the right to act as arbiter. In 1623 Émeric Crucé "proposed the establisnment at Venice of an assembly of ambassadors of all the nations of the world, oriental as well as occidental, who should settle all international disputes," while Grotius in his "War and Peace" (1625) "advocated congresses of Christian states at which international controversies shall be decided by disinterested powers, with authority to compel the parties to accept peace on equitable terms."[5]

A court to decide controversies between states actually appeared for the first time in history in the form of the Supreme Court of the United States, the United States being "a congeries of independent and antonomous . . . states with full rights of sovereignty, except so far as each has delegated to the general government certain powers essential to a unified existence.[6]

"In the Kansas *v.* Colorado case (185 U. S. 128) the court said that what elsewhere would be a cause of war, in this country would be discharged by resort to judicial power; that the

[3] J. H. Ralston.
[4] H. B. Brown.
[5] Idem.
[6] Idem.

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court had jurisdiction on the question of the power of one state wholly to deprive another of the benefit of water rising in the former and by nature flowing into the latter, and that the Supreme Court sat as an international as well as a domestic tribunal and applied Federal law, State law, and International law, as the exigencies of the case demanded, and that while the Federal government in its legislation was one of enumerated powers, the entire judicial power of the United States was vested in the Supreme Court."[7]

A survey of the cases in the Supreme Court of the United States involving disputes between states,—boundary and other —was followed by the remark that the significance of these cases lies less in the fact that "by applying for the admission to the union the states agreed to the creation of an international court to settle all controversies between them, than to the universal acquiescence in the decrees of that court and in their enforcement without compulsory process."[8] This observation would fall when controversies of a burning nature should array a large number of states on one side against a large number on the other; "it was monstrous to suppose that a universal agitation could be quieted down by the opinion of a majority of nine men."[9]

Differences of religion and race make the problem of a high court before which all the nations shall on occasion yield their sovereignty much more difficult than was the problem of a supreme court for a group of states like the United States bound by ties of a common language and common institutions, but that which offers the greatest obstacle is "the conflicting interests of the nations always more selfish than the best of their citizens."[10]

The development of the American doctrine of the jurisdiction of courts over states was traced from the early colonial period[11]

[7] F. N. Judson.
[8] H. B. Brown.
[9] Idem.
[10] H. B. F. Macfarland.
[11] A. H. Snow.

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in which the mother country was conceded to have only a "leadership in judgment"—the Greek attitude—as opposed to the actual power to command—the *imperium* of the Latins. It was out of this conception that the practice grew of binding our governments by written constitutions regarded as emanating from the people.

About the time the colonies were being founded the belief that courts could successfully exercise jurisdiction over states was markedly strengthened by the case of the Postnati which determined the status of Scots in England after the accession of James VI of Scotland to the throne of England as James I. The significant features of this case were that the court although nominally a conference between the Lords and Commons to which the judges of England were invited as counsellors, was in fact an extraordinary Tribunal; that the case was argued "from the standpoint of the civil law, 'the law of nations and of reason,' the history of nations and the common law"; that it settled a dispute between England and Scotland; and that it recognized a supreme law common to England and to the countries connected with her politically.[12]

Disputes between the colonies or between a colony and England were habitually referred to tribunals in England, which tribunals the colonies were willing to entrust England "with the duty of establishing and maintaining."[13] Therefore, it was natural that when the American colonies became independent of England, they should provide, first—under the articles of confederation—a tribunal to settle disputes between states, especially constructed for each case, and later,—under the Constitution—a permanent supreme court which should have jurisdiction of such disputes.

It is the conception of a "supreme universal law securing

[12] A. H. Snow.

"The judges arrived at the unanimous conclusion that Scots born after the accession of James to the throne of England (the postnati), were entitled in England to full civil rights of person and property, but had no political rights; and that Scots born before the Union were aliens in England."

[13] One of the important cases submitted and decided in this way was a boundary dispute between Maryland and Pennsylvania (1750).

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the fundamental rights of the individual against all government," which is the basis of the indissoluble union of the United States of America; which has governed the conduct of local courts in America, in England and elsewhere, as well as of the Supreme Court of the United States; and which may prove "the most efficient bond of union" among the nations of the world if there is set up an international supreme court to which appeal may be had in the last resort. . . . "The test of the international character of a court is not whether it is established by the nations, but whether it administers a law which is supreme over the nations."[14]

The decisions of courts as a source of law were referred to as a most urgent reason why the Permanent Court of Arbitration at the Hague should be supplemented by a true international court of justice.[15] Such a court, dealing with various systems of law, would perhaps not build up the law as readily as a court governed by the principles of the English Common Law exclusively; but while in theory, Roman law courts are not governed by previous decisions, they do in point of fact constantly yield to precedent as set up in previous decisions. In contrast to the body of judge-made law which arises wherever true courts of justice exist, is the barrenness of the arbitration tribunal as a source of law.

The aim of a court of arbitration is to compose differences, and the spirit of compromise which prevails as a result thereof can hardly yield lasting principles of law or justice.[16]

This particular defect of arbitration is illustrated by the way in which industrial arbitration tends to precipitate conflict by reason of the belief that the principle of compromise will result in at least part of the demands, however, unjust, being

[14] A. H. Snow.

[15] Eugene Wambaugh.

[16] The justice of this criticism is realized when we recall the displeasure with which the Geneva Award is still regarded by many impartial minds because of its tendency to burden the neutral in time of war with duties more or less difficult to discharge, instead of placing the burdens of war where they belong, *i.e.*, on the belligerent. Sir Henry Maine felt that the principle laid down in the Geneva Award must some day be discarded.

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granted. "Prospect of arbitration is felt by each combatant to diminish the risks he takes in joining battle. It often produces cessation of actual warfare, the reëstablishment of an interrupted industry and a brief truce; but in the large view and in the long run it rather encourages and promotes industrial strife than prevents it."[17]

The reference should be to some tribunal the controlling principle of which is justice so that "the parties to industrial strife . . . would be held back by the prospect of losing their whole case." This tribunal need not necessarily be a court but might well take the form of a board of inquiry as in Canada, public opinion being relied upon to force a just settlement after the facts have been brought to light. "As a means of preventing industrial warfare" this latter "far surpasses every arbitration scheme that has ever been tried."[18] The peaceful settlement of such a serious incident as the Dogger Bank affair (1904) as the result of simply an investigation of the facts conducted before the International Commission of Inquiry at the Hague shows that this method is no less effective in the international field.

The causes of war were attributed to three principal sources of disagreement involving; (a) rights over territory, trade privileges, etc., (b) national policy which may demand that a country be allowed to push its trade in certain spheres, to acquire new territory or influence, or "insist upon a certain course of action by other countries"; (c) national feeling which though often deep and bitter and "the most dangerous of all causes of war . . . ordinarily depends in the beginning upon different views regarding the specific rights of the two countries."[19]

The establishment of a true international court of justice it was felt was an urgent need. Not only would its operation at once begin to create authoritative international law in the form of judge-made law, but its very existence would invite

[17] C. W. Eliot.

[18] Idem.

[19] Elihu Root.

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the codification of international law and the formal adoption of such law by the nations, just as the Prize Court, adopted by the Second Hague Conference, led to the London Conference (1908–9) which codified the law of prize.

The criticism has been made that the awards of courts of arbitration have been so generally accepted because burning questions have not been submitted to arbitration: that wars which have actually occurred were over differences too serious for peaceable adjustment. There is much force in this criticism, but an impartial analysis[20] of wars in which our own country has engaged shows that, at least as applied to us, the criticism is far too sweeping; that many of the controversies could have been peaceably composed and that certainly if, at the time of these wars, an international court had existed and international practice in regard to the subjects of the controversies had been as defined as now, these wars could have been avoided. Moreover, nations which hesitate to enter a court of arbitration because they regard the interests at stake as too important to subject to the risk of compromise, will be more willing to abide the decision of a true court of justice which shall be governed by established international practice, or, in its absence, will at least apply the general principles of justice.

The objection to having on an international tribunal nationals who must be consciously or unconsciously prejudiced in favor of their country and who act as advocates rather than judges is enhanced by the fact that the proper relation between court and counsel cannot obtain between them and the umpire, "no ethical rule" preventing "the national commissioner from addressing himself at any time to a fellow judge."[21] The later system of allowing the disputants to select non-nationals has not overcome the difficulty because the non-nationals "readily take on the color,—the attitude of mind,—of the disputant to whom they owe their selection."[22] Not only should no national ever again be allowed to sit upon arbi-

[20] J. W. Foster.
[21] J. H. Ralston.
[22] F. D. McKenny.

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tration tribunals, including the Hague Tribunal, but there should exist a freely acknowledged right to challenge any of the proposed arbitrators, for the reason that the close relations existing between some nations make their subjects quite as predisposed to favor the cause of a friendly country as its own national would be.[23]

Touching the question of the powers of the proposed court, it is presumed that it would start with very limited or no jurisdiction, that questions would be referred to it voluntarily or by agreement of the powers in pairs or otherwise, but that the growing confidence of the world in the probity and ability of the court would gradually lead to an ever widening jurisdiction. An ultimate extreme position, involving jurisdiction over the question of the very independence of a state, is imagined as follows:—"If, for instance, a given nation should prove to be so unruly, so anti-social and so injurious to international order that its existence ought no longer to be tolerated, the powers, acting together on the mandate of an international judicial tribunal rather than on the mandate or agreement of the foreign offices, might decree the extinction of the national life of the state in question, just as the criminal court within a state may decree the extinction of the life of a malefactor. It may easily be that such a case would never happen. At the same time it is conceivable; and should it occur, would it not rest on a far sounder basis than transactions which have occurred in the past, and which, whatever their jurisdiction in point of equity, after all, have had the appearance of simple international spoliation."[24]

Moreover, if given jurisdiction over internal disputes, which are acute and threaten widespread disorder or revolution, an international court may at times prove effective in avoiding civil war; although, before this much desired result can be reached, the nations must recognize as supreme and universal the rule that no political entity be allowed to deprive the individual of "life, liberty or property without due process of law"; just

[23] J. H. Ralston.
[24] H. P. Judson.

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as within the boundaries of the United States neither local nor federal government may violate this principle.[25]

In considering the difficulties of the composition of the proposed international court, which would be too unwieldly if each of the forty-three nations participating in the Second Hague Conference should be allotted a permanent representative in the court, it was pointed out that "in the discussion of the Supreme Court of the United States the then thirteen states were considered, with all their ideas of sovereignty provided for in the composition of the United States Senate, as having possible rights to be represented in the Supreme Court of the United States."[26] Owing to the difficulty of arriving at an acceptable basis of representation in the court, it may be necessary to set up a court without the initial coöperation of the smaller states, the high character of the court and its practical advantage being relied upon ultimately to "secure the adherence of other nations, even though the latter did not secure the representation they desired on the court."[27]

The fundamental requisites for a permanently successful court, were indicated as: "First, that its procedure be expeditious and the rights of contending parties be guaranteed; second, that the constituents of which it is composed be respected by all civilized nations; and lastly, that the principles it is called upon to apply be clear, and such as shall have merited universal approval."[28]

The latter need, the need of searching out the fundamental principles of international law and justice, of formulating them, and of having them adopted by the civilized nations was emphasized repeatedly during the Congress, not only in relation to the proposed court, but with reference to the general good relations of the world.

"The main objection to a general and absolute treaty of arbitration lies in the want of an authoritative code of laws

[25] A. H. Snow.
[26] H. B. F. Macfarland.
[27] Idem.
[28] Francisco Leon de la Barra.

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governing states, as the municipal laws of a state govern its citizens."[29] The new Carnegie endowment for peace was urged to initiate this work.[30]

Although the scantiness of authoritative international law was clearly recognized, it was presumed that the nations will none the less boldly empower the international court to fall back upon the wisdom of its day, and declare as law what it finds to be the just practice of men. Just as the ancient tribe in the absence of written codes relied upon its judges to declare the law, so "the great tribe of the world" will set up a body of judges who shall say "There is no code, but this is the wisdom and the justice of the human society to which we belong."[31] In much the same way the Supreme Court of the United States has proceeded to interpret and apply international law. "For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision," says the Court itself, "resort must be had to the customs and usages of civilized nations, and as an evidence of this, to the works of jurists and commentators who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects which they treat. Such works are resorted to by judicial tribunals, not for the speculation of their authors as to what the law ought to be, but for trustworthy evidence of what the law really is."

(In re. Paquete Habana, 175, U. S. 677.)[32]

Supplementing judge-made law there is likely to be a rapid codification of certain spheres of international law invited by the very existence of the court. In this twofold way the crystallization of authoritative international law is likely to proceed at a pace hitherto unprecedented, making text books obsolete at short intervals. Just as the practical inventions have made more progress in the past one hundred fifty years than in the whole previous period of recorded history, so author-

[29] W. R. Riddell.
[30] T. N. Page.
[31] O. T. Crosby.
[32] Quoted by F. N. Judson.

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itative international law in the true acceptation of the term is likely to show greater development in the near future, following the establishment of an international court of justice, than in the whole past.

As international law should adjust and reconcile "not override conflicting systems"[33] of law, the question presents itself to what extent the proposed international court will be expected to combine the principles of the court of law and the court of equity, and, until the law becomes more definitive, even introduce in a measure the spirit of compromise which characterizes diplomacy. Some such broad character must attach both to the law and the court in order to make them acceptable in the beginning and possibly for many years to come. "A true international court of jurists will have an international mode of interpretation, a blend perhaps of civil law and the common law, or of Oriental and Western rules."[34]

The Interparliamentary Union, which has met annually for the past seven years, was referred to as a body of over "2,000 lawmakers of the parliaments of the world bending every energy to substitute law and justice for force."[35] It was suggested that the Union should be reorganized by providing for a less unwieldy number of members who shall be chosen and specially delegated by the home parliaments. Add to this provision an agreement on the part of the home parliaments that all measures adopted by the Interparliamentary Union shall be, not necessarily approved by them, but at least considered and given a chance to be approved, and a great step will be taken toward giving expression to the international will. As, over against this quasi-popular branch of an international legislature, we have in embryo an upper house in the form of the Hague Conferences, the members of which are delegated by the executive branches of the home governments, it is not unlikely that in the course of time these two bodies will evolve a true international parliament. The origin of most

[33] F. W. Hirst.
[34] Idem.
[35] Richard Bartholdt.

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of our sound institutions is in the needs of the community. There is very great need of an institution which shall help to crystallize and give authority to the more commonly accepted practices of the world today in international relations and thus help build up authoritative international law.

The project of an international force to compel submission to the decrees of the international court was examined and rejected because there are "so many natural jealousies to be surmounted" . . . and "so many obstacles to the exercise of such a power." Public opinion was thought to be a better sanction and in course of time could be developed into an effective sanction.[36]

Questions of honor and vital interest have hitherto been excluded by the more powerful countries from the scope of treaties for the submission of future disputes to arbitration. So long as these exceptions existed, arbitration treaties were not a guarantee of peace, for the double reason that questions, actually involving honor, etc., might at any time arise and that a nation bent on mischief might so interpret other questions.

It was therefore of distinct advantage to the future peaceful relations of the world when, earlier in the year, the President of the United States declared that he saw no reason why questions of honor should be so excluded. But at the Washington conference of the society, the gap in the ramparts was completely closed by the new pronouncement of President Taft in favor of an agreement which shall serve to demonstrate that all questions, even such as involve honor or territory, may be safely referred to an international arbitration court. The statement attracted world-wide attention; it was the subject of a telegram of congratulation from the editors of the leading Liberal newspapers of England, it is likely to lead to important practical results, and it must remain as the most notable utterance at the congress.

[36] H. B. Brown.

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THE CONSTITUTIONALITY OF OLD AGE PENSIONS.

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The question of the constitutionality of government aid to the needy classes in the community may arise because of the existence of the rule which forbids the exercise of the power of taxation for any but a public purpose.

The general principle that the purposes for which this power may be exercised must be public is perfectly clear, but the principle is to be applied in the light of our history. Thus from a very early time in the history of both England and this country the taxing power had been used to provide funds for the support of the poor. The poor laws, as they were called, have been regarded as constitutional notwithstanding the general rule of constitutional law to which allusion has been made.

As new conditions have appeared to make necessary attempts on the part of the legislature to accord aid to various classes of individuals in the community, the courts have been called upon to determine whether such attempts are forbidden by the principle requiring that the purpose of the legislature shall have been public or whether they fairly come under the exception to the rule which has been shown always to have existed.

The validity of such attempts is to be determined in the first place by a consideration of the purpose and effect of the 14th amendment. There was nothing in the original constitution of the United States or in the original amendments thereto which could be regarded as limiting to public purposes the taxing power of the States. In Loan Association *v.* Topeka (20 Wall. 655) it is true the Supreme Court of the United States held invalid certain bonds issued by a municipal corporation

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in aid of a private manufacturing enterprise. The grounds for the decision were that there are, as Mr. Justice Miller expressed it, certain "rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all a despotism. . . . To lay with one hand the power of the government on the property of the citizen and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes is none the less a robbery because it is done under the forms of law and called taxation. . . . We have established, we think beyond cavil that there can be no lawful tax which is not levied for a public purpose." This was said as to the meaning to be given to the constitution of the state of Kansas which the court was called upon to apply in the absence of decisions by the state courts interpreting it.[1]

Mr. Justice Clifford dissented from the conclusions of the court on the ground that "Courts cannot nullify an act of the State legislature on the vague ground that they think it opposed to a general latent spirit supposed to pervade or underlie the constitution, where neither the terms nor the implications of the instrument disclose any such restriction. Such a power is denied to the courts, because to concede it would be to make the courts sovereign over both the constitution and the people and convert the government into a judicial despotism."

The views of Mr. Justice Clifford are approved in Fallbrook Irrigation District *v.* Bradley (164 U. S. 112) where it is said that, if an act of a state legislature does not violate some provision of the federal constitution, "there is no justification for the federal courts to run counter to the decisions of the highest state courts upon questions involving the construction of state statutes or constitutions, on any alleged ground that such decisions are in conflict with sound principles of general constitutional law." The court after making this

[1] See Fallbrook Irrigation District *v.* Bradley, 164 U. S. 112–155.

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statement proceeds to decide the case before it on the theory that state taxation for a private purpose would be forbidden by the 14th amendment.

It may therefore be said that the employment by the state of the power of taxation for a private purpose is unconstitutional from the point of view of the United States constitution.

What now is the distinction made by the United States Supreme Court between a public purpose, taxation for which is proper, and a private purpose, taxation for which is improper? In its decision of this question the Supreme Court has never overruled the decision of a state court that a given purpose, for which state taxes had been levied, was public in character. In Olcott *v.* Supervisors, 16 Wall 689, the Supreme Court did indeed claim that it was not bound by the decisions of the state courts as to what is a public purpose for which taxes may be levied and was of the opinion that a purpose was public which had been declared to be private by the state court. The case would appear, however, to have been decided on other grounds. Indeed, in Fallbrook Irrigation District *v.* Bradley (164 U. S. 112), the court, while denying that the determinations of state courts are conclusive "upon the question as to what is due process of law, and as incident thereto, what is a public purpose," observes; "it is obvious, however, that what is a public use frequently and largely depends upon the the facts and circumstances surrounding the particular subject matter in regard to which the character of the use is questioned." In this case the court held, for example, that irrigation was a public use in arid districts and says: "The people of California and the members of her legislature must in the nature of things be more familiar with the facts and circumstances than can anyone who is a stranger to her soil. This knowledge and familiarity must have their due weight with the state courts which are to pass upon the question of public use in the light of the facts which surround the subject in their own state. For these reasons, while not regarding the matter as concluded by these various declarations and acts and decisions of the people and legislature and courts

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of California, we yet, in the consideration of the subject, accord to and treat them with very great respect and we regard the decisions as embodying the deliberate judgment and matured thought of the courts of that State on this question."

While the California case recognized differences due to climate and geographical conditions, a later case from Massachusetts (Welch *v.* Swazey, 214 U. S. 91) recognized that the same influence was to be accorded to social conditions. In this case, the Supreme Court took almost the same position with regard to a law passed to remedy, through limitations imposed upon the height of buildings, the evils resulting in urban conditions such as exist in a great city like Boston, from the uncontrolled use of land.

Whether the court will carry this idea of the local autonomy of the states in deciding what should be the remedies to be applied to the evils attendant upon an intense industrial life under conditions of freedom of individual action, of course cannot be said, but the logic of the argument cannot be avoided if the court can be brought to see that the difference in conditions due to the varied occupations of the people in different parts of the country are in reality just as great as the differences in climate and social conditions which were recognized in the opinions from which quotations have been given.[2]

It may therefore be concluded both from these opinions and from the absence of decisions overruling the determinations of state courts on the subject that each of the states has quite a large freedom of action in determining, in the circumstances and conditions existing within it, what purposes are public from the view point of its power of taxation.

We are thus brought to a consideration in the second place, of the decisions of the state courts as to what are public purposes for which the power of taxation may be exercised.

The state courts have been influenced in their determination of this question by the fact that the undertaking which was

[2] See also Missouri *v.* Lewis, 101 U. S. 22, for a recognition of the principle that varying conditions of population may under the 14th amendment be subjected to different treatment by the states.

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being aided by the exercise of the power of taxation was or was not in the control and management of private corporations or individuals. Where the control and management are private they are more apt to regard the purpose as private than where such control is in the hands of the state or local authorities. Thus, the Supreme Court of Ohio has held that even under a constitution recognizing a duty upon the part of the state to support the indigent blind in public institutions, it is improper for the legislature to grant out of public funds an allowance to an indigent blind person not supported in a public institution.[3]

When it is said that the courts are influenced by the fact that the undertaking is under private control it is not meant to indicate that the character of the control is decisive. For the courts have frequently held that where the character of the purpose is unquestionably public, the character of the control is immaterial. Thus the use of the taxing power to aid railway corporations has almost universally been upheld as constitutional.[4] It is usually where the character of the purpose is doubtful that the character of the control affects the decision.

In what, now, does doubt as to the character of the purpose consist? In answering this question we have, as has been intimated, to resort to history which has such a potent influence on the decision of constitutional cases. Nowhere perhaps is the historical argument more forcibly expressed than in Loan Association *v.* Topeka, (20 Wall. 655) where the court says: "In deciding whether, in the given case, the object for which the taxes are assessed falls upon one side or the other of this line, they [the courts] must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation

[3] Lucas Co. *v.* State, 75 Ohio St. 114; see also Wisconsin Keely Inst. Co. *v.* Milwaukee Co., 95 Wis. 153, where a payment to a private corporation for the cure of an indigent drunkard was declared to be improper. But see Mayor *v.* Keely Inst., 81 Md. 106; In re House, 46 Pac. (Col.) 117; and White *v.* Inebriates Home, 141 N. Y. 123.

[4] See for example Olcott *v.* Supervisors, 16 Wall, 689.

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levied, what objects or purposes have been considered necessary to the support and for the proper use of the government whether state or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation."

It follows therefore that the objects for which taxes have been levied in the past are public purposes from this point of view. Thus roads, schools, highways, and the protection of the peace, of the public health and safety are all public purposes for which taxes may be levied.

It is only when we come to the new functions the discharge of which changed economic and social conditions make it seem necessary for the state in either its central or local organizations to assume, that we meet with difficulty. What criterion are we to adopt when we come to consider such subjects as old age, accident and sickness pensions, which in some form appear to be essential parts of the program of social reform in Germany, England and Australasia?

As no attempt has as yet been made in this country to establish old age, sickness and accident pensions, we have no decision directly in point. We have, it is true, a few decisions on the subject of pensions to government employees. But they cannot be regarded when favorable as having any particular force since such pensions are regarded rather as a part of the compensation attached to government employment than as gratuities.[5] Indeed, we have a few decisions which hold such pensions to be improper where they are awarded to persons who have already been retired from the public service,[6] or who, while in the public service, have not been induced to continue in the service as a result of their award.[7] On the other hand, the cases holding service pensions of this character to be unconstitutional cannot be regarded as deciding

[5] See *e. g.* Commonwealth *v.* Walton, 182 Pa. St. 373.
[6] See *e. g.* In the Matter of Mahon, 171 N. Y. 263.
[7] See State *v.* Ziegenhein, 144 Mo. 283.

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that old age pensions *e. g.* are improper where such pensions are confined to the indigent since no attempt has been made in providing for service pensions to confine them to those who are in pecuniary need.

In endeavoring to answer the question as to the constitutionality of old age, accident and sickness pensions, we must study the cases which have been decided as to doubtful purposes of taxation,—*i. e.*, doubtful from the point of view of their being public or private,—and then try to reason by analogy from them to the question in hand. A study of the cases which have held purposes to be private and therefore to be improper purposes of taxation can hardly fail to force the conclusion that any purpose is an improper purpose for taxation which consists in the grant of public monies to individuals who are not in the service of the government or who cannot be regarded because of their poverty as fit subjects of public charity. An old age, accident or sickness pension which is not conditioned upon poverty would probably be regarded by the courts as unconstitutional where the funds from which it was paid were derived from taxation.

Nor would the benefits to the general social welfare which might conceivably be derived from such a pension have very great effect upon the attitude of the courts. Even if these advantages were conceded the pensions would still be declared unconstitutional unless former decisions were overruled. For very generally, advantages derived by the public from the expenditure of public money do not make public the purpose of the taxes from which such money is obtained. This was decided by Lowell *vs.* Boston. (111 Mass. 454). This case declared unconstitutional an act of the legislature providing for the issue of bonds the proceeds of which were to be loaned to individuals to aid them in rebuilding in the district destroyed by the great Boston Fire.[8] There is also a series of cases, of

[8] See also State *v.* Osawkee Township, 14 Kan. 418, which declared the grant of aid to poor farmers to purchase grain for seed and feed, in districts affected by drouth was not a public purpose. This case was decided in 1875, only two years after Lowell *v.* Boston. Cf. William Deering Co. *v.* Peterson, 75 Minn. 118.

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which Loan Association *v.* Topeka is an example, holding that the issue of city or state bonds payable out of the proceeds of taxation to aid private manufacturing corporations is improper as imposing taxation for a private purpose.

Lowell *v.* Boston and Loan Association *v.* Topeka were decided many years ago (1873 and 1874, respectively). While there has been no indication of an attempt to reverse them as to the particular points of the law which they decided, they have not, however, been extended in their operation. There are also a number of cases, some decided by the Supreme Court of the United States, which have extended the principle of the railway aid cases so as to include mills for grinding grain which are open to all comers at a fixed toll,[9] as well as one case in a state court which has somewhat extended the conception of public charity so as in districts affected by droughts and other calamities to permit the use of the taxing power to obtain capital for the purchase of seed corn by needy farmers, who, while not at the time paupers were in great danger of becoming such did they not receive aid.[10]

But it will be noticed that none of the cases upon this subject has recognized the constitutionality of acts which make grants of public monies derived from taxation to persons not either performing a public service similar to that performed by a public officer or a common carrier, or not assimilated to the position of paupers. In State *v.* Osawkee Township, in which the opinion was given by Judge Brewer, afterward a member of the United States Supreme Court, the constitutionality of the act was denied because the recipients of the aid were not actually paupers.

The only case which shows any tendency to regard as a public purpose the use of the power of taxation, with the idea

[9] See *e. g.* Burlington *v.* Beasley, 94 U. S. 310; Blair *v.* Cummings Co., 111 U. S. 363. These cases are interesting as showing how closely the Supreme Court follows the decisions of State courts as to what are public purposes and therefore proper purposes for taxation in their respective states, thus recognizing large powers of social coöperation in local communities.

[10] North Dakota *v.* Nelson Co., 1 N. D. 88.

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of preventing pauperism, is the North Dakota case where it is said: "If the destitute farmers of the frontier of North Dakota were now actually in the alms houses of the various counties in which they reside, all the adjudications of the courts, state or federal, upon this subject, could be marshalled as precedents in support of any taxation, however onerous, which might become necessary for their support. But is it not competent for the legislature to make small loans, secured by prospective crops, to those whose condition is so impoverished and desperate as to reasonably justify the fear that unless they receive help, they and their families will become a charge upon the counties in which they live?"

What now has been the attitude of the state courts towards the granting under present constitutional provisions pensions or allowances to persons regarded as paupers? In answering this question it would seem to be necessary to bear in mind the character of the control of the funds granted. If that is private, the tendency of the courts is, as has been pointed out, to regard the purpose as also private. Courts which recognize education as a proper purpose of taxation sometimes consider as improper the grant of public monies to educational institutions under private control. (Jenkins *v.* Andover, 103 Mass. 94). It is true that this question of grants of money to private schools is somewhat complicated by the fact that private educational institutions which desire public aid are usually at the same time sectarian institutions, and on that account for other constitutional reasons not proper recipients of public aid. There are also cases which have taken the same view with regard to charitable institutions under private control which have been established with the idea of offering aid to particular classes of indigent persons.[11] Opposed to them, however, is an imposing array of cases which refuse to apply in charitable matters the rule that the private character of the control necessarily makes the character of the purpose private.[12]

[11] Such are the Keely Cure cases decided in Wisconsin, *e. g.* Wisconsin Keely Inst. Co. *v.* Milwaukee Co., 95 Wis. 153.

[12] Mayor *v.* Keely Inst. 81 Md. 106; In re House, 46 Pac. (Col) 117; White *v.* Inebriates' Home, 141 N. Y. 123; Shepherd's Fold *v.* New York, 96 N. Y. 137.

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But even if we assume that the better rule is that public monies may constitutionally be granted to private corporations established for charitable purposes, we have by no means proved that public moneys may be granted to indigent individuals. For corporations under such conditions are regarded as acting as agents of the state in discharging the public function of supporting the poor. They do not receive the funds granted them for their own benefit.

In order to uphold from a constitutional point of view the grant of pensions to individuals we may attempt to show that such pensions are justified by the historical argument, as being a form of poor relief and are not declared improper by the logic of the decisions rendered with regard to the propriety of particular attempts to provide poor relief.

May old age, accident and sickness pensions granted to indigent persons properly be regarded as a form of outdoor relief? The cases on the subject of relief to paupers are legion but the question as to the constitutionality of the numerous statutes providing for the grant of outdoor relief and regulating the respective relations of the persons receiving it, ordering it and dispensing it has apparently not been raised. Such statutes are assumed to be constitutional and the decisions have concerned themselves with determining the reciprocal rights and duties of individuals under the statutes.

On general principles we can therefore assume that such pensions if granted to indigent persons under the limitations set forth would be constitutional as a form of outdoor relief unless the courts are of the opinion that the historical argument is inapplicable and that such pensions are evidence of an attempt to adopt for our free, independent and self-supporting American population a new and unprecedented form of relief originating outside of England or the United States and *e. g.* in one of the so called paternalistic governments of Europe.

It must be admitted that certain remarks made in the course of deciding one or two concrete cases tend to force the conclusion that all the state courts at any rate are not as yet prepared to regard pensions even to indigent individuals as

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constitutionally proper in this land of individual freedom and private initiative. These cases are Lucas Co. *v.* State (75 Ohio State 114) and State *v.* Switzler (143 Mo. 287). In the former the legislature provided for granting to all adult blind persons "who have been residents of the state for five years and of the county one year, and have no property or means with which to support themselves" allowances not to exceed twenty-five dollars quarterly. The court declared the act to be unconstitutional largely on the ground that it provided for the expenditure of public funds for a private purpose and closed its argument by saying: "If the power of the legislature to confer an annuity upon any class of needy citizens is admitted upon the ground that its tendency will be to prevent them from becoming a public charge, then innumerable classes may clamor for similar bounties, and if not upon equally meritorious ground, still on ground that is valid in point of law, and it is doubted that any line could be drawn short of an equal distribution of property." The court was influenced in a negative way by the historical argument already mentioned. After quoting the formulation of it by Mr. Justice Miller in Loan Association *v.* Topeka, it remarked: "If that rule is applied here, it must be said that the act under consideration is without precedent in this state."

In the Missouri case the legislature passed an act providing for the levy of a progressive inheritance act, which was regarded by the courts as unconstitutional both because of its progressive character and because of the purpose for which it was levied, viz.—to provide fellowships in the State University for students dependent upon their own exertions for their education and "financially unable to otherwise obtain the same." In the course of the opinion the court took occasion to say that: "Paternalism whether state or federal, as the derivation of the term implies, is an assumption by the government of a quasi-fatherly relation to the citizen and his family, involving excessive governmental regulation of the private affairs and business methods and interests of the people, upon the theory that the people are incapable

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of managing their own affairs, and is pernicious in its tendencies. In a word it minimizes the citizen and maximizes the government. Our federal and state governments are founded upon a principle wholly antagonistic to such a doctrine. Our fathers believed the people of these free and independent states were capable of self-government; a system in which the people are the sovereigns and the government their creature to carry out their commands. Such a government is founded on the willingness and right of the people to take care of their own affairs and an indisposition to look to the government for everything. The citizen is the unit. It is his province to support the government and not the government's to support him. Under self government we have advanced in all the elements of a great people more rapidly than any nation that has ever existed upon the earth, and there is greater need now than ever before in our history of adhering to it. Paternalism is a plant which should receive no nourishment upon the soil of Missouri."

It is to be noticed that the historical argument which is in large degree the controlling argument in these cases, when taken together with the insistence upon that political and economic theory known as *laisser faire*, to which is accorded an absolute and universal application at all times and under all circumstances, both make social reform impossible, so far as its concrete measures cannot be justified by our own history, and regards political and economic conditions as static rather than as progressive in character. The result of its universal application will be to fix upon the country for all time institutions, which were established in the eighteenth century to deal with conditions then existing, but which may in this the twentieth century be unsuitable because of the economic, social and political changes which have taken place in the last hundred years.

The emphasis given to this historical argument, furthermore, is not justified by the attitude of the Supreme Court of the United States. For Mr. Justice Miller after formulating the argument in his opinion in Loan Association *v.* Topeka,

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was careful to indicate his feeling that it was not controlling by saying: "though this may not be the only criterion of rightful taxation," while the court in its more recent decisions on what is due process of law under the 14th amendment has shown very clearly that in its opinion the decision of the question is to be influenced by the geographical and social conditions attendant upon the particular case in which the question is raised.

Such an application of the historical argument, will, where the constitution is not easily susceptible of amendment, almost preclude the possibility of orderly and legal change in our conception of the powers of government, made necessary by changes in economic and social conditions, and may conceivably make unavoidable resort to revolutionary methods of change. Such a result naturally is not only to be deprecated but must be regarded by abhorrence by all who believe in a progressive development in an orderly manner.

It may then be said that until the state constitutions have been changed and the state courts have decided that such changes are from the viewpoint of the federal constitution proper, there is no great likelihood that a system of state pensions in the case of old age, sickness or accident which is based even on the indigence of the recipients of such pensions would be regarded as constitutional. Whether, where provisions have been inserted into the state constitutions making such pensions clearly constitutional, and the approval by the state courts of their propriety from the viewpoint of the federal constitution has been secured, the United States Supreme Court will be guided by the decisions of the state courts, is a question about which we may indulge in an almost indefinite amount of speculation, but as to which a certain answer cannot be given. It is well, however, to remember that the Supreme Court has several times held that the due process of law and the equal protection of the laws required by the 14th amendment are not the same thing in all parts of the country. That body has already recognized that certain climatic and population conditions have the effect of making state laws consti-

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tutional which under different conditions might be regarded as improper. It does not seem a long step from this position to the further position that industrial, *i. e.* economic, rather than climatic and social conditions shall have the same effect, and it is always to be borne in mind that the Supreme Court has said more than once that the decision of state legislatures and state courts, which have knowledge of local conditions is entitled to the greatest respect and will not be overruled except in a perfectly clear case.[13]

The states, however, are not the only authorities in our government, which may conceivably wish to establish systems of pensions of the class under consideration. For in Great Britain and in the German Empire, which is a federal government like our own, it is the imperial and not the local government which has made provision for these pensions or something very like them. Can Congress then constitutionally provide for such pensions?

The constitution of the United States contains no express limitations upon the purposes for which federal taxes may be levied except those contained in Article 1, Sec. 8, which says, "Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." Inasmuch as the government of the United States is regarded as one of enumerated powers it is considered that the latter part of this clause does not contain a grant of new power but rather imposes a limitation upon the purposes for which the taxing power may be used. So we may assume that the purposes of federal taxation are limited to paying the debts and providing for the common defence and general welfare.

We have practically no judicial decisions upon the question of the propriety of the purposes of federal taxation and naturally also none as to old age, sickness and accident pensions. There are, it is true, a great number of cases construing the

[13] The recent case upholding the constitutionality of a law providing for a bank depositors' guaranty fund takes a long step in the direction of upholding a scheme of compulsory insurance. Noble State Bank *v.* Haskell, 31 S. C. R. 186.

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laws under which pensions have been granted to persons who at one time were soldiers or sailors of the United States. But in these cases the question of the constitutionality of this disposition of the public funds has not been discussed. On the contrary the constitutionality has been assumed and the cases have been concerned with the nature of the right to the pension, which has been held to be a gratuity,[14] or with the criminal provisions of pension laws adopted with the idea of preventing the grant of pensions to improper persons.[15] It is true that since military pensions have been held to be gratuities the power of Congress to provide for gratuitous allowances to private individuals out of public funds has been thus indirectly upheld but it is to be remembered that these military pensions have been given to a class of persons who by reason of the services they have rendered have been regarded as having special claims to the bounty of the government.

The only cases which we have where the courts have been asked to exercise a control over the discretion of Congress in the expenditure of public funds derived through the exercise of the power of taxation are the Sugar Bounty case,[16] and the Panama Canal case.[17]

In both these cases the Supreme Court refused to take jurisdiction and in the Panama Canal case the court said in reference to the demand of the plaintiff that the Secretary of the Treasury be enjoined from paying out money for the canal: "The magnitude of the plaintiff's demand is somewhat startling. . . . For the courts to interfere and at the instance of a citizen who does not disclose the amount of his interest to stay the work of construction by stopping the payment of money from the Treasury of the United States therefor would be an exercise of judicial power which, to say the least, is novel and extraordinary."

An even stronger position is taken by the Supreme Court in

[14] Walton *v.* Cotton, 19 Howard 355; United States *v.* Teller, 107 U. S. 64.
[15] See *e. g.* Frisbie *v.* United States, 157 U. S. 160.
[16] United States *v.* Realty Co., 163 U. S. 427.
[17] Wilson *v.* Shaw, 204 U. S. 24.

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the Sugar Bounty case. In this case Congress passed an act making an appropriation for the payment of the claims of those persons who relying upon an Act of Congress providing for the payment of bounties had engaged in the manufacture of sugar. The bounty act was subsequently repealed but this appropriation had been made in order to tide over the sugar manufacturers who were regarded as having a moral claim against the government. The proper disbursing officer of the government acting upon the theory that both the original bounty act and the subsequent appropriation act were unconstitutional as appropriating public funds for a private purpose, refused to pay the bounty and a mandamus was asked to force him to make the payment. The lower court held the act to be unconstitutional and denied the motion. After this decision had been reached the plaintiffs in the suit sued the United States government in one of the circuit courts of the United States acting as court of claims which gave judgment for the plaintiffs and the case was brought by writ of error to the United States Supreme Court. That court believing that the case could be decided without entering upon a discussion of the validity of the original sugar bounty acts, affirmed the judgment of the lower court. It did so on the theory that the "debts of the United States" to pay which Congress may by the constitution levy and collect taxes include moral as well as legal obligations, saying: "Payments to individuals not of right or of a merely legal claim but payments in the nature of a gratuity, yet having some feature of moral obligation to support them have been made by the government by virtue of acts of Congress appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of mere charity." It is, of course, a far cry from claims of this sort to old age, accident and sickness pensions and it is doubtful if the moral obligation upon which such payments have been based could be so extended as to include a moral obligation of the government to its needy classes. Yet that obligation has from time immemorial been recognized in the laws of England and this country with regard to poor

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relief. Furthermore, if it is said that the granting of old age, sickness and accident pensions is an unwarrantable extension of the activity of the federal government it may be answered that such action is no more of an extension of that activity than the grant of bounties for the encouragement of manufacturing which is subject to state rather than to federal regulation, or than the grant of money to educational institutions, which is provided by the Morrell act, or the gratuitous distribution of seeds to farmers.

Finally, it is to be remembered as the court says in closing its opinion in this sugar bounty case: "In regard to the question whether the facts existing in any given case bring it within the description of that class of claims which Congress can and ought to recognize as founded upon equitable and moral considerations and grounded upon principles of right and justice we think that generally such question must in its nature be one for Congress to decide for itself. Its decision recognizing such a claim and appropriating money for its payment can rarely, if ever, be the subject for review by the judicial branch of the government."

It must therefore be said that there is at least some ground to be found in the decided cases and our legislative precedents for holding that pensions in case of old age, sickness or accident which are payable to indigent persons only may be provided for by the Congress of the United States. Even if this is not the case it would be difficult to find a judicial remedy by applying which the courts could interfere. The two cases from whose opinions quotations have been made would seem to indicate that the courts of the United States will not interfere to prevent the expenditure of public funds. And if the pensions were to be paid out of the proceeds of taxes which were levied for other purposes as well as for the payment of these pensions the taxpayer could not bring the matter up through contesting on this ground the constitutionality of a tax which from other points of view was constitutional.

If a precedent is desired for the distribution by the national government of public property to the needy classes in order

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to subserve some social end conceived of as desirable, one need only point to the policy which has for so many years been followed by the government in its laws with regard to the public lands. Originally the public domain was regarded as an asset to be used to pay the public debt and a portion of the current expense of the government. Later on, viz., in 1830, it was used to encourage settlement through the plan of preëmption in accordance with which bona fide settlers were permitted to take up land to a maximum amount, viz., a quarter section at the minimum price of $1.25 an acre. Still later, viz., in 1862, the Homestead law was passed. Under this land might be acquired for nothing by a five years' occupation which might be commuted at stated periods by the payment of a regular purchase price. Finally from the beginning of our history land was granted outright either to specified classes of persons such as soldiers, or railway companies, or for specified purposes, as in the case of the swamp land grants. The purpose of the government was two-fold. It was first to develop the resources of the country; it was second to secure a class of small proprietors in the belief that such a class made a good economic basis for democratic government. Public property was granted to private persons not merely to develop the country but to offer greater equality of economic opportunity to the less well endowed classes of the community, and no attempt was made to declare unconstitutional the action of the government. It is, of course, true that Congress gets its power to legislate with regard to the public lands from a special clause in the constitution but its discretion as to the purposes for which this power may be exercised is no greater than it is as to the purposes for which the power of taxation may be used.

Who in view of the history of the public domain will venture to say that the constitution limits the power of Congress to dispose of the public funds as it sees fit in order to promote what it considers to be the "public welfare of the United States" to provide for which the constitution specifically says the taxing power may be used?

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Our conclusions then as to the constitutionality of old age, accident and sickness pensions are, assuming that the courts do not change their view:

1. Such pensions when provided by state action are not prohibited by the 14th amendment or any other provision of the federal constitution, particularly if they are confined to indigent persons.

2. If not confined to indigent persons they are unconstitutional under the ordinary provisions of the state constitutions.

3. Even if confined to indigent persons they are probably unconstitutional under the ordinary provisions of the state constitutions, although there is some reason for believing they might be justified as a form of outdoor poor relief.

4. There is much ground for the belief that such pensions, particularly if confined to indigent persons, might constitutionally be provided by the federal government.

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POLITICAL INSTITUTIONS IN LIBERIA.

GEORGE W. ELLIS, F. R. G. S., K. C.[1]

Liberia will long be a source of permanent interest to the government and people of the United States, not only because it was founded and fostered by American citizens, but because there is going on there in the interest of the African races one of the unique struggles in modern state-building, in an endeavor to perpetuate in West Africa a government fashioned after the American democracy in which liberty shall be limited and regulated by law.

Under the most unfavorable circumstances the Liberian people have entered upon a grave and stupendous undertaking. The high political ideas and principles which they represent, the ardor and fidelity with which they have maintained them for nearly three quarters of a century against European opposition and in the midst and in the presence of the overwhelming numbers and dissimilar civilization of their African kinsmen, entitle them to the sympathetic consideration and good will of all liberty-loving nations.

The Liberians are now engaged in a national campaign; and in January 1911, a president was nominated who for the next four years will have the responsibility and the direction of Liberian affairs. And in view of the revival of American activity in that republic and our natural relation to it, a brief sketch of some of the main features of present political conditions in Liberia may be of some passing interest at this time.

For the exercise of the political authority and jurisdiction

[1] Mr. Ellis was for eight years Secretary of the American Legation to Liberia. Among other articles published by him, relating to Liberian affairs, are the following: Education in Liberia (National Bureau of Education); Justice in the West African Jungle (The Independent); Dynamic Factors in the Liberian Situation (The Journal of Race Development).

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of the Liberian republic the Americanized settlements are divided into counties and territories, cities and townships. The territory occupied by the native Africans is generally known as the hinterland and is divided into commissioner-districts. With about sixty or seventy-five thousand Americanized Liberians the area of Liberia is variously estimated at from forty-five to fifty-five thousand square miles. With a sea frontage of about three hundred and fifty miles the Liberian hinterlands extend interiorward at varying depths of from two hundred to three hundred miles, and has an aboriginal population of from two to two and one half millions.

The Americanized settlements are distributed along the sea coast in four counties and one territory. The territory of Grand Cape Mount is on the north-west with Robertsport as its capital and chief center, and the Mano River as the boundary between Liberia and the British colony of Sierra Leone. The four Liberian counties follow each other to the east as named: Montserrado, Basa, Sino and Maryland, with the Cavalla River marking the line between Liberia's eastern limits and the French West African possessions of the Ivory Coast. Monrovia is the principal city of Montserrado County and is the capital of the republic and was named after President Monroe of the United States. Buchanan is the chief center of Basa County; Greenville of Sino; and Harper of Maryland.

The people of Liberia vested the powers of the government in a written constitution, adopted in 1847, and which divides the political authority into the three departments, legislative, executive and judicial. Under the constitution as amended a few years ago the President and Vice-President are elected for a term of four years; the members of the House of Representatives for four years, and those of the Senate for six years. The members of the judicial department hold their office during good behavior. Formerly, the President was elected for two years, the representatives for two years and the senators for four years.

The President and members of the Legislature are elected

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by the people whose suffrage is limited only by a property qualification. The other officials of the government are appointed by the president with the concurrence of the Senate. The advisors of the President consist of a cabinet of seven who hold their offices during the pleasure of the executive and who may also be removed by a vote of two thirds of the Legislature. The President may be removed only by impeachment originating in the House of Representatives with the Senators acting as judges and the Chief Justice as the presiding officer. Each county has two senators and the representatives are apportioned according to population, the present representation being four for Montserrado County, three for each of the other three counties and one for Cape Mount Territory with some representatives from native tribes.

The judiciary consists of a Supreme Court of three judges, and quarterly, probate and justice courts for each of the counties and territories. The judges can only be removed for cause, the president suspending and his suspension meeting with the approval of the Legislature. In the hinterlands the native Africans have the right of appeal from the native courts of the interior to the Court of Quarter Sessions and Common Pleas of the county in which they reside. Monrovia, catching the spirit of the times, abolished, a year or so ago, the justices of the peace and established a municipal court, the tenure of whose judge is during good behavior.

The political authority of the President is exercised in the counties and territories by a governor, appointed by the executive, and is generally called the superintendent. In the interior the President is represented by a commissioner, who presides over each commissioner-district, and who associates with him the native chief in the control and government of the native peoples of his district. In some instances this commissioner has judicial functions from which an appeal lies to the Quarterly and Supreme courts. The authority of the commissioner is supported by a detachment of the Liberian Frontier Police Force, with headquarters at the Monrovia barracks.

There are a few striking things about the Liberian govern-

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ment. One of them is the remarkable respect which the people have for law and order and the constituted authorities of the government. During the sixty odd years of Liberian independence the government has never been subverted for a moment, nor has the will of the people been defeated as expressed at the polls. Another is the great power of the President, growing largely out of his large political patronage. And notwithstanding the fact that the President appoints all the Liberian officials from cabinet ministers down to constables, (members of the Legislature excepted), it is astonishing how long many Liberian officials remain in office and the infrequency with which some of them are removed. The care and conservatism with which the President exercises his great appointive power is one of the strong and admirable features of the Liberian government.

And finally the most notable characteristic of the Liberian government is the existence practically of only one political party. The reasons for this no doubt are many, but important if not chief among them, is the economic depression which followed the decline in the prices of Liberian coffee. Coffee was the overshadowing staple industry of the republic. The Liberian planters had invested all the capital they had in the coffee industry, and when coffee went down in the early 90's the different Liberian communities were thrown into such a paralysis of hard times that they have not recovered to this day. Disheartened and financially distressed, formerly strong, self-sustaining and independent Liberian planters, one after another, abandoned their plantations and transferred their time and attention from coffee culture and the farm to politics and office seeking. And while something is due to the ability of the administrations to undermine opposition by capturing its capable leaders thru the charm of political preferment, something due to the smallness of the civilized population and the disposition of voter and leader alike to be on the winning side, yet, economic dependence is at the foundation of the one party systen which now obtains in Liberia.

Very recently Liberia was drawn into the lime-light of inter-

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national consideration by external force and pressure. Liberia was not only in serious danger of dismemberment, but the very life and independence of the republic was threatened from without. In the crisis which followed Liberians were alarmed and aroused as never before to find themselves hurriedly thrust into the presence of a new era, with old and new duties to be discharged which no longer could be deferred, new responsibilities to be assumed, new situations to be met, and new and perplexing problems to be solved.

Of the problems confronting Liberia at the present time, perhaps, the most pressing and immediate is the financial problem which involves the payment for Liberia of two British loans of £100,000 each, one of 1871 and the other of 1906, and the taking charge of the Liberian customs, now under the supervision of British officials. A domestic floating debt of possibly $300,000 must be discharged and Liberian finances reorganized and partially restaffed in accord with the late and best fiscal methods of the day. The Hon. Daniel E. Howard, Secretary of the Treasury, has already taken up this very important work and has introduced into Liberian finances some very timely and commendable features.

Next to the administration of Liberian finances is the educational problem. At the present time the educational facilities are not sufficient to meet the growing educational demands upon the state. With the reorganization of the finances Liberia should have her school system thoroly examined and reorganized and new brain and blood infused into the teaching force. The Episcopal and Methodist churches of the United States are very prominent in the educational activities and have in their missionary schools nearly half of the Liberian children attending school. The lack of funds, trained teachers and school buildings are the present chief difficulties. Thousands of native children, on account of the financial conditions of the country, are without educational opportunities. More educational facilities are indispensable to the permanent independence and liberty of the Liberian people. It is hoped, therefore, that American aid will mean something for the

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educational system of this republic, not only in so far as the Americanized Liberians are concerned, but in the extension of larger educational opportunities to the native races.

Under the administration of President Arthur Barclay the Liberian government has increased its influence materially in its grasp upon the control of the interior tribes; and the important work of the pacification of the hinterland has advanced so far as to make intertribal wars infrequent and inconsequential. But there still remains the very urgent need of assimilating the Liberian native races to the spirit and principles of the Liberian democratic institutions. This important work of developing the native peoples of Liberia is inseparable from the development of the vast resources of Liberian hinterlands, whose hills and streams are rich with precious metals, and whose forests abound with the finest mahogany and other rare woods, besides a great variety of rubber producing flora. American capital will find safe and lucrative investment in the development of Liberian natural resources, in which alone lays the ultimate and future foundations of the Liberian state.

Perhaps the most acute of Liberian problems are those arising in connection with her frontier difficulties with France and Great Britain, which involve the organization and equipment of a Liberian Frontier Police Force already in process of formation. Great Britain wrested from Liberia in 1883, over the diplomatic opposition of the American government, a large section of Liberian northwest territory. The Anglo-Liberian boundary was delimited by a joint commission in 1903, yet in spite of this fact Great Britain now occupies the Kaure Lahun section, which comprises about three hundred and fifty miles of valuable lands admittedly on the Liberian side of the northwest boundary. To secure the evacuation of this territory it is very evident that Liberia must have the assistance of the government of the United States. In 1892 France followed the British example on the north-west and took from Liberia the Ivory Coast on the south-east. France occupied other Liberian lands in the hinterland and is now seeking still more to make her Liberian acquisitions equal to those of Great

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Britain. For half of a century Liberia has been deprived of her lands by first one and then the other of these two powers, and unless the people of the United States render some practical aid the indications are that Liberia will gradually be obliterated from the map.

The subject of Liberian judicial reform has excited a great deal of comment both in Liberia and in Great Britain. Great Britain first demanded the reform of the Liberian judiciary. President Barclay urged action upon this subject during the last two sessions of the Liberian Legislature and one or two administration bills were prepared to meet the British demand, but none of them were ever enacted into law, in spite of the able and brilliant advocacy of the President's recommendation by Attorney General C. D. B. King; Vice President Dossen, Counsellors T. McCants Stewart[2] and C. B. Dunbar, Superintendent of Education E. J. Barclay and Secretary of State F. E. R. Johnson. The judicial reformers contend that the Liberian judiciary should be reorganized so that the judges could only be selected from the ablest members of the Liberian bar; that the salaries should be so increased that the best lawyers could afford to accept and would aspire to fill places on the bench, as a fitting climax to their professional career; and finally, that the judges should be decreased in number and freed as far as possible from the influence of partizan politics in the administration of justice. The Liberian lawyers led in urging these needed reforms and they would no doubt succeed with a little diplomatic advice and assistance from the United States.

For some time past Liberia has been the great labor recruiting station for West Africa. The thousands of Liberian laborers are attracted as stevedores on European ships plying on the West Coast and as agricultural laborers in the different European colonies east and south of Liberia, by the cash wage of 36 cents and board which they can readily command. On account of this outside demand for Liberian laborers, con-

[2] Counsellor T. McCants Stewart has recently been appointed Associate Justice of the Supreme Court, indicating the increasing prospects for judicial reform.

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sidered the best in West Africa, Liberian planters complain of being unable to get sufficient laborers for their plantations, and that the work of agriculture and general industry is handicapped for the want of adequate labor forces. The fact is that on account of the undeveloped state of industry in Liberia capital cannot afford to pay the Liberian laborer in steady wages as much as he can obtain elsewhere; but with the development of the country and the introduction of large capital into Liberia, industry and the labor market will be able to offer the Liberian laborer enough wages to keep him at home and thus dispense with one of the now vexing problems of the republic.

Just what the United States is going to do to help Liberia meet the various situations which confront the Liberian people, at least, is still unknown to the general public in the United States. A little more interest on the part of Liberia in an educational campaign to present the facts of the Liberian situation in full to the American people at large might arouse that American public sentiment which is too often necessary for effective official action in a democratic government.

Soon after the adoption of the Liberian constitution in 1847 the people divided themselves into two political parties under the same names as those which obtained at the time in the United States—the Republican and the Whig parties. For some time the Republican party has ceased to exist in Liberian politics. The opposition to the Whig party for the most part has been unorganized, without wise and resourceful leaders, and without funds adequate to compete with the dominant Whig administrations in national campaigns. But like the present Republican party of the United States the Liberian Whigs have met all the Liberian difficulties during the past thirty years or more. The Whigs have been progressive and inspired by wise and distinguished statesmen, the Liberian Whigs have repeatedly addressed themselves with success to the Liberian voters. Opposition to the Whig party in Liberia at the polls, seems now to have little or no chance of success,

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so that a nomination upon the Whig ticket is equivalent to an election.[3]

The members of the Whig party are now engaged in the work of selecting the successor to President Barclay; and the next Liberian President, if not already determined, will be announced in the present January by the Liberian National True Whig Convention, in order to prepare for the election in the coming May.

The discussion for the next Liberian President has clustered about the names of four Liberian statesmen: President Arthur Barclay, Secretary of State F. E. R. Johnson, Vice President John J. Dossen, and Secretary of the Treasury Daniel E. Howard.

President Barclay for years was the acknowledged leader of the Liberian bar. Serving for a time as postmaster general, he was for eleven years Secretary of the Liberian Treasury and professor in Liberia College. He brought with his elevation to the presidency a deep thinker, a wide public experience and equipment, a gentleman of modest and retiring manners, a faithful public servant and a brave champion of public measures. He surrounded himself with the ablest men of his country and his administrations will be remembered for many notable civic triumphs in behalf of the Liberian state: the definition of Liberian boundaries, the pacification of the interior, increased control of the native races, organization of the Liberian Frontier Police Force, better supervision of the Liberian customs, and repeated attempts at judicial and other domestic reforms. But President Barclay has served eight years, the limit fixed by the traditions of his high office, and in deference to American and Liberian precedent declines to permit his name to be used in connection with another nomination.

Secretary Johnson is the grandson of Elijah Johnson, the historic Liberian patriot who by his wisdom and courage saved the infant colony of Liberia from early extirpation; and the son of the late ex-President Hilary Johnson, one of Liberia's

[3]Since the nomination for President new and aggressive opposition has developed through the division in the Whig party.

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notable public men. Secretary Johnson is proud and dignified in his bearing, scholarly in his attainments, and fluent in his speech. For years he has acknowledged no superior and has been recognized as a close competitor of President Barclay at the bar. He has enjoyed extensive foreign travel and has had a varied public experience. He has served on two important foreign missions and at different times has been postmaster general, attorney general, and is now secretary of state. But like President Barclay, tho for different reasons, Secretary Johnson declines to allow his name to be presented to the National Whig Convention for Liberia's next president.

Vice President Dossen is a man of magnificent physique and splendid intellectual powers. Aggressive and proud in spirit, ready and forceful in language, he has enjoyed a useful public record. For ten years he was associate justice of the Supreme Court and compiled the publication of the Supreme Court Decisions. He served as envoy extraordinary to France and to the United States and now presides with becoming dignity over the deliberations of the Liberian Senate. Supported solidly by Maryland County with friends along the coast, Vice President Dossen is a factor in the presidential situation which cannot wisely be ignored.

Secretary Howard is the son of Thomas Howard, who for years was chairman of the National True Whig Party and Treasurer of the Liberian republic. Comparatively a young man Secretary Howard is a natural leader of men. Frank, honest and decisive he may be truly described as the Mark Hanna of Liberian politics. He received his education at Liberia College and in the study and management of men. Proud of his race and country he is to my mind to-day the strongest single factor in the Liberian republic. He has large influence with the aboriginals because of his ability to speak fluently a number of native tongues and he is usually relied upon to settle the native palavers and difficulties. He is Chairman of the National True Whig Committee and for years has been keeping intact and commanding the great forces of his party. He is a political leader of the highest

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order. It is said of him that to his friends he is as true as steel, and that he does not know what it is to break a political promise. He was governor of Montserrado County and is now the master of Liberian finance. In his positions as Chairman of the National True Whig Committee and Secretary of the Treasury, Mr. Howard in recommendations to the President and otherwise has conferred so many political favors that he is regarded as the people's candidate with special claims upon the leaders. His County of Montserrado polls more votes than all the other three counties together, and with the loyal support of his county, and with at least an even chance with his rival on the coast, it is very difficult to see how the Liberian presidency can escape this Liberian son in the next National True Whig Convention.

But no matter who is nominated by the convention, whether Vice President Dossen or Secretary Howard, the public record and attainments of the two leading candidates give every assurance that Liberia will have a splendid president, whose administration will endeavor to cultivate a closer and more practical relation between the republics of Liberia and the United States of America.[4]

[4] Secretary Howard was nominated and is the regular Whig candidate for the Presidency. Vice President Dossen has been nominated by the National Union Party, a new political organization, and a spirited campaign will be closed May 5, 1911.

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TENDENCIES OF THE LABOR LEGISLATION OF 1910.

IRENE OSGOOD ANDREWS.

Assistant Secretary American Association for Labor Legislation.

A leading English economist once said, "It matters nothing to the seller of bricks whether they are to be used in building a palace or a sewer; but it matters a great deal to the seller of labor, who undertakes to perform a task of given difficulty, whether or not the place in which it is to be done is a wholesome and a pleasant one, and whether or not his associates will be such as he cares to have."

This statement strikes the keynote of the activity in the field of labor legislation during 1910.[1] All down the ages the worker has been protesting against being required to sell his life or his health in addition to his labor, even though he was assured by most political economists that he was getting higher money rewards for dangerous or disagreeable work; and the moralist, too, was telling him that accident and disease were acts of God to be met by prayer and fasting.

But to-day public opinion is in hearty support of this protest of the workman. The employer himself, stirred by efficiency needs and by humanitarian impulses, is hard at work on the principle of "philanthropy and five percent." Manufacturers say that at least one half of the accidents can be prevented and we have seen the folly of permitting the worker or his family to bear the burden of the expense of those which are unavoidable. Recognizing that accidents are a considerable permanent factor in our industry and moved by the fact that nearly every civilized country except our own has provided compensation for injuries received in the course of employment, we have at last

[1] For a complete review of the labor legislation of 1910 see Publications of the American Association for Labor Legislation, No. 11.

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taken up the problem in earnest, and we find the greatest activity of the year concerned with the liability of employers for accidents to employees and with protection against accidents in mines, factories and on railroads.

COMPENSATION FOR ACCIDENTS; PENSIONS

Last year, commissions to study local conditions and existing methods of compensation and to report bills were authorized by the legislatures in Illinois, New Jersey, Massachusetts, Ohio, Washington, Missouri, Montana, and by Congress.[2] Reports have been made by the commissions appointed in 1909 and 1910, except by that of the federal government, but, with the exception of New York (1909), bills were not to be reported until 1911; hence little legislation on employers' liability was enacted in 1910. In New York, however, two such measures became law last year.

In establishing a new basis for the recovery of damages, two methods are advocated. One group believes in increasing the present liability of the employer by abolishing the old common law defenses of contributory negligence, fellow servant, and assumption of risk. The other group believes in abolishing entirely the present method of recovering damages by suits at law, and establishing an entirely new system based upon the principle of a stated compensation for each accident, regardless of any "fault," except wilful negligence of the employee. This latter method was the one adopted in a New York act, known as the compulsory workmen's compensation law.[3] The principle involved is similar to that of the English Workmen's Compensation Act of 1906 and is a most progressive step for this country. It applies to injuries received in eight extra-hazardous, non-competitive employments and provides for compensation by the employer, regardless of fault, for all accidents which

[2] Commissions appointed in 1909: Wisconsin, Minnesota, New York.

[3] In the case of Ives *v.* South Buffalo R. R. Co., March 24, 1911, this law was declared unconstitutional by the New York Court of Appeals on the ground that it took away the property rights of the employer without due process of law.

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are due to "the negligence of employers, agents, or employees, or by the necessary risk or danger of the employment or one inherent in the nature thereof." The compensation provided in case of death is four years' wages, but not to exceed $3,000. In case of total or partial disability the injured man may receive, for a maximum period of eight years, 50 per cent of his average weekly earnings, but not more than $10 a week, payable weekly, during disability. The injured person must decide at the time of bringing suit whether he will act under the compensation law or under the existing liability law, and his decision is final.

Under the second act employers and employees may agree upon a compensation scheme for accidents occurring in any occupation except railroads and the occupations included in the compulsory law. But only one application has been entered under this plan.

Maryland, undaunted by the decision of unconstitutionality given against her 1902 compensation act, has again provided for fixed relief for employees injured in coal and clay mines in two counties of that state. These two measures and the Montana compensation law of 1909 applying to coal mines, constituted the only state compensation acts of this country at the beginning of the year 1911.

A most conspicuous measure following the method of increasing the liability of the employer by taking away his common law defenses, was enacted into law in Ohio as the Norris Employers' Liability Act. In Mississippi and New Jersey also, and by the second measure in New York, the existing liability laws were amended so as to increase the responsibility of the employer and to make the recovery of damages easier for the workmen.

While compensation for injuries to employees is receiving attention in practically every state, only a few of these are considering the subject of old age pensions in private employments. New Jersey provided for a commission to study and report on the subject, but no bill has been drafted and the work of the commission came to nothing. The Massachusetts

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Commission on Industrial Old Age Pensions, appointed in 1909, issued its report last year, with recommendations against the adoption of any general old age pension system modelled after the British act of 1908. This Commission, however, drafted bills to establish pension systems for employees in public service, and the legislature of 1910 authorized an investigation of the cost of such systems.[4] In New Jersey the laws providing pensions for public service employees were amended and supplemented.

PROTECTION OF EMPLOYEES IN MINES, FACTORIES AND ON RAILROADS

While the after-care of disabled workmen is under consideration, such casualties as the Cherry Mine disaster, the Newark and New York factory fires, and the revelations of the investigations into industrial diseases among wage earners have shown us again that, after all, attempted compensation for the destruction of usefulness or of life itself is not the real problem. The real problem is to make such events impossible. The futility of our present employers' liability laws in preventing accidents, and the doubtful preventive value of certain classes of compensation measures, point to the use of specific legal enactment to correct specific defects as the most effective method of prevention. Such desirable legislation gives permanency and uniformity to protective measures but usually waits upon the results of investigation or the occurrence of disaster. After the Cherry Mine disaster the people of Illinois were not content with the probable enactment of a compensation law, but they demanded permanent legal protection from the recurrence of such a disaster, and a special session of the state legislature enacted detailed provisions safeguarding the miners. These provisions relate to the installation of proper water connections, sprinklers, pails and

[4] Report published by the Massachusetts Bureau of Statistics, January, 1911. The Cost of Retirement Systems for State and County Employees in Massachusetts. By F. Spencer Baldwin.

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barrels and chemical fire extinguishers; the management of underground stables, storage of bedding and feed for the mules; arrangement of telephones, gongs, and signals; and requirements concerning shafts and roofs of new coal mines to be developed later. In addition three mine rescue stations have been established by the state. In Kentucky also three bills were passed providing for such safeguards as oxygen helmets with accessory equipment and for the more efficient inspection of mines; and in Louisiana a bureau of mining and minerals was created. But for scientific data on the prevention of accidents which will form the basis of effective legal measures, we shall doubtless receive the greatest help from the new Bureau of Mines created last year by the federal government and attached to the Department of the Interior.

On railroads also the number and spectacular character of recent accidents influenced the federal government to give to the Interstate Commerce Commission power to standardize safety devices for cars on interstate roads, and to investigate accidents, make recommendations and publish reports. Railroad employees in Ohio will receive protection through three new measures which provide for safety devices for frogs, switches and crossings, and for the more efficient inspection of locomotive boilers; both Ohio and Virginia provide for the safer construction of caboose cars.

Protection for employees in factories and workshops received considerable attention in New York and Massachusetts. The former state required pure drinking water in factories, strengthened the existing sanitary law in regard to cleanliness and removal of dusts; and both New York and Virginia provided for adequate toilets and dressing rooms in work places. The Massachusetts acts aim at securing more healthful conditions in textile factories, with special reference to humidity. Special legislation affecting women workers received attention only in Virginia, where the indefinite law requiring "proper and suitable seats" for females was amended by providing specifically for at least one suitable seat for every three females employed in mercantile establishments.

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In attempting to get away from the present indefinite character of our laws which do not distinguish between degrees of danger in different industries, the work of the Illinois Commission on Occupational Diseases should be suggestive of definite methods of procedure. This Commission, appointed in 1909 and authorized last year to employ experts, has investigated conditions in certain dangerous trades, and their findings should form the basis for the enactment of scientific standards which will meet the actual needs of the occupations legislated for. Careful investigation into phosphorus poisoning [5] revealed not only the presence of the disease to an unexpected extent, but it also showed conclusively that the disease could not be eliminated by protective measures, but only by the absolute prohibition of the use of the poison; and a bill placing a prohibitive tax on poisonous phosphorus was introduced at the last session of Congress, but failed to pass. We may hope for similar scientific data from the investigation by the federal Bureau of Labor into the industrial conditions of the iron and steel industry.

HOURS OF LABOR

The legislatures of 1910 did not see fit to extend to adult workmen in private employments the further protection to health afforded by limiting the hours of work. This kind of protection is adopted with great hesitancy in the United States, although European countries have long since recognized the fact that after the usual mechanical safeguards against accident or disease have been adopted, there still remains the further step of limiting the period of exposure. This principle is recognized by us mainly in the eight hour limitation in mines and less obviously in the hour limitation on public works. Last year Kentucky joined the twenty-four states and territories prescribing the eight hour day for public employees. While

[5] Bulletin 86, United States Bureau of Labor, "Phosphorus Poisoning in the Match Industry," by John B. Andrews.

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many of these laws are entirely unenforceable, the Kentucky act is strong in that it makes it a penalty "to require *or permit*" more than eight hours per day. It unfortunately adds the undefined exception "in case of extraordinary emergency," a clause which has destroyed in part the effectiveness of the Wisconsin eight hour law of 1909. By the passage of an amendment to the federal Naval Appropriation Bill, the eight hour day is required in the construction by private contractors of certain authorized United States vessels.

No laws were enacted limiting the hours of labor for women, but the constitutionality of two important measures, the Illinois ten hour day,[6] and of the Michigan fifty-four hour week,[7] was sustained by the supreme courts of those states. Unsuccessful attempts were made to establish an eight hour day in Ohio and to legalize practically unlimited hours for women in the canning industry in New York.

The principle of protective legislation for children in all employments meets with but little opposition from either the general public or the courts, although the New Jersey law of last year prohibiting the night work of children was enacted only after a five year struggle. On the other hand, a most progressive step was taken in Massachusetts by giving to the State Board of Health the power to exclude children under eighteen from any occupation which it finds to be injurious. Two points in an excellent Ohio law deserve special mention: First, the employer is required to return the child's certificate to the school authority two days after the child stops work; second, children must attend school for full time when not employed. The former provision permits the school authority to exercise some much needed control over the kind of work a child may do. The second provision overcomes a long felt defect of child labor laws in that it forbids a child to roam the streets when out of work. Child labor laws in Rhode Island, New York, Vermont and Massachusetts were

[6] W. C. Ritchie & Co., et al., Appellees, *v.* John E. W. Wayman et al., Appellants.
[7] Withey *v.* Bloem, 128 N. W. 913.

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strengthened in several other respects, and Congress provided for additional inspection of child labor conditions in the District of Columbia.

In his new book on "Popular Law Making," Professor Stimson, while admitting our advanced position with regard to hour limitation for women, justly criticizes the mechanical character of such laws. He says, "Now all these laws arbitrarily regulate the hours of labor of women at any season without regard to their condition of health, and are therefore far behind the more intelligent legislation of Belgium, France and Germany, which considers at all times their sanitary condition. . . . " It is indeed true that we have made practically no attempt to classify industrial occupations in order to distinguish between the more or less harmful industries. A few states prohibit the employment of women in mines and in places where liquor is sold, and a few other states have blanket laws, entirely unenforceable, intended to prohibit the employment of women in occupations which require continual standing. But in France, for instance, females are forbidden to enter a place in which any one of forty-six processes are carried on, because of the danger to health from poisoning or disease due to high temperature or presence of injurious fumes, gases or dusts. Another list of nearly one hundred occupations is forbidden to females, except under special protective conditions. Even Spain has forbidden the employment of females and minor children in a long list of occupations, and many countries give special protection to working women before and after childbirth.[8] While it is true that women in foreign countries are employed in occupations where in this country only men are found, or where the specific process differs greatly, yet investigations have shown that our women work under conditions extremely dangerous to their health, and from which they should be excluded entirely, or the hours of labor greatly reduced.

[8] Massachusetts has just enacted the first American law of this kind.

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WAGES

State regulation of the kind, time or method, of payment of wages in private employments has continued despite the early decisions of courts which declared such acts to be "an infringement alike of the right of the employer and the employee, more than this, it is an insulting attempt to put the laborer under a legislative tutelage which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States." [9] Conditions, however, have been such as to convince legislatures of the need of regulation and this opinion is now more frequently sustained in recent court decisions on the ground that interference is often necessary "for the protection of classes of individuals against unfair or unconscionable dealings."[10]

A decision given in June 1910 by the New York Court of Appeals sustained the constitutionality of the 1908 New York law requiring railroad corporations of the state to pay wages semi-monthly and in cash.[11] The court recognizes an "irreconcilable conflict" in existing decisions; nevertheless such legislation is regularly enacted. The rate of wages was affected in Oklahoma by an act of last year which directed that coal must be weighed for payment before it is screened or loaded on cars. Protective measures relating to time of payment, liens and assignment were passed in Oklahoma, New Jersey, Massachusetts, Louisiana, and for Alaska by an act of the federal government; the business of wage-brokers was regulated in Louisiana and New Jersey.

The validity of regulations affecting wages in public employments is less often questioned either by the legislatures or by the courts. A semi-monthly pay-day law for state employees was enacted in New York, and in Maryland a minimum rate of wages was established for employees of the city of Baltimore.

[9] Godcharles *v.* Wigeman, 113 Pa. St. 437, 1886.

[10] Opinion of Justices, 163 Mass. 589, 1895.

[11] N. Y. C. & H. R. R. R. Co. *v.* Williams.

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IMMIGRATION, UNEMPLOYMENT, TRADE DISPUTES

The acuteness of immigration problems in New York led to the appointment of a special commission on the subject in 1908. In 1909, a report was made and last year four bills were passed based upon the commission's recommendations. Three of these acts protect the immigrant against fraud in connection with banks, with ticket agents and with notaries public. A fourth act creates within the state Department of Labor, a Bureau of Industries and Immigration, which deals with labor conditions affecting aliens. The powers of the Bureau are limited almost entirely to investigation and inspection for purposes of making reports or recommendations to other agencies having special powers of enforcement. The federal commission on immigration has promised us forty volumes on the subject, a preliminary report having been already issued.

Public opinion concerning the regulation of conditions affecting the right to work is in a most unsettled condition. No state has admitted by legal enactment the need for the direct relief of unemployment except by the establishment of free employment bureaus. Sixteen states have established such agencies. Last year the state bureaus in Oklahoma and Rhode Island received additional appropriations for their work, and private agencies in New York and Virginia were placed under closer supervision. In Massachusetts a commission was appointed to study and report upon the operation of both public and private agencies within the state.

As to trade disputes in employment, action is being taken in many states, but no settled policy exists. We find organized labor quite generally opposed to such *compulsory* measures as the Canadian Industrial Disputes Investigation Act; on the other hand our courts of final authority give but little help since their decisions turn first one way then another. Many bills on the subject were introduced in the legislatures of 1910, and a Congressional amendment was proposed to exempt trade unions from the operation of the Sherman anti-trust law,

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but only one bill succeeded in passing. This is a Massachusetts act requiring employers to announce existing labor disturbances when advertising for help. Both Maryland and South Carolina enacted legislation favorable to trade union labels.

It is probable that the labor legislation of the next decade at least will be concerned mainly with the prevention of accidents in mines, factories and on railroads, and with establishing some just system of compensation for injured workmen. But no such system will be adequate which does not include relief for industrial diseases as well as for accidents. As to compensation, two points arise. First, will such acts be declared constitutional? The decision in the New York case seems to indicate that no matter how greatly the people in that state wish to adopt a certain course of action, this cannot be done without amending their constitution. But, fortunately for the country at large, there are other methods and also other courts. Second, any such law places an additional burden upon the community, which in turn should demand that the very operation of the law should *prevent* as far as possible the occurrence of accidents.

In securing the enactment of laws for the prevention of accidents and for the protection of the health of wage earners, we must not forget that labor legislation to be effective must be based upon careful investigation of the conditions pervading each particular industry, for this alone makes possible a standardization of occupations based upon actual needs of health and safety.

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NOTES ON CURRENT LEGISLATION.

CONDUCTED BY HORACE E. FLACK.

Child Labor—Indiana. The Indiana child labor bill emerged from the session of 1911 in a different and far less admirable form from that in which it went in. The Child Labor Committee who were back of the bill as well as many others interested in the subject were keenly disappointed in the results and altho the law is in some ways an advance, it is so far behind what was hoped for, that at first one is tempted to say that no new law on the subject was preferable to the one passed. The original bill, in addition to regulating the employment of children in certain classes of work and certain trades, provided that no child under fourteen years of age should be employed or permitted to work in any gainful occupation other than farm work or domestic service, and, for children under sixteen stipulated a forty-eight hour week and an eight hour day; it also abolished night work for children under sixteen. This last excellent provision is retained in the law as passed and there will be no more night work for Indiana children, in spite of the glass manufacturers of the state, who tried hard to defeat this part of the bill. Also the general provisions in regard to certain trades and employments were passed practically as introduced except that the attempt to change the age of girls to be employed in certain forms of work to under eighteen years was not successful and these regulations apply to both girls and boys of under sixteen years.

The more radical changes made by the amendments affected the hours of labor for children and the forms of gainful occupations in which children are allowed to work. In addition to being permitted to work at farm labor and domestic service a further provision makes it possible for children from twelve to fourteen to be employed in canning factories, which are otherwise unregulated in the matter of employing children, from June 1 to October 1. Where the glass men failed to abolish the night work clause, the canners were more successful and the children will do their share of the work this summer. Also, in place of working no more than forty-eight hours a week or

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eight hours a day, they, as well as all other children employed, may work for fifty-four hours a week or nine hours a day, if the employer obtains the written consent of the parent or guardian, according to the last amendments to the bill. Such a clause, of course, practically means a fifty-four hour week and a nine hour day for the children.

ETHEL CLELAND.

Corrupt Practices at Elections. During the month of February, the states of Indiana, North Dakota and Wyoming passed comprehensive corrupt practice laws. In the two latter states, the provisions of the Oregon primary law were followed closely and the plan of publishing a state pamphlet, stating reasons for the election or defeat of the respective candidates, and furnishing a copy to each elector of the state was adopted. Forty days before the primary, (thirty-three days by the Wyoming law) candidates may file with the secretary of state their portraits and statements of the reasons why they should be nominated. Those who oppose them may file the reason of their opposition. Space in the pamphlet is sold at a rate per page varying with the importance of the office sought. In Indiana, it ranges from $100 per page for a candidate for United States senator or congressman, for governor, secretary of state or state treasurer, to $10 per page for assemblymen; additional space not to exceed three pages is procurable at the rate of $100 per page, or $25 per page, depending upon the office. In Wyoming the price per page varies from $200 to $100, additional space being sold at $100 per page. The secretary of state publishes these statements in a pamphlet six by nine inches in size and mails a copy to each registered voter in the state. The Wyoming law makes further provision for the filing of statements by political committees prior to the general election relative to their party principles and candidates, and for publishing and distributing these statements by the secretary of state.

The amount which a candidate may spend in the primary or election, exclusive of the expense for space in the official pamphlet, is limited by the North Dakota law to fifteen per cent. of one year's salary of the office he seeks, although $100 is allowed in any case. The Wyoming law allows an expenditure not to exceed twenty per cent of one year's salary, with a minimum allowance of $200. Illegal expenditures under the North Dakota act embrace contributions, during one's candidacy, to religious, political or charitable causes, the gift of intoxicating liquors to influence electors, payments for transporting

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voters to the polls, or for any loss they have sustained through attendance at the polls and hiring workers on primary or election day. Badges or insignia may not be sold or worn near the polls, nor may electioneering be done on election day.

The Wyoming law prohibits payments for political services by candidates or political committees, except for the endorsement of candidacy through the papers, for securing signatures to nomination papers, and such expenses as are connected with the holding of public meetings, or with the gratuitous service of writers and speakers, the distribution of literature, conducting headquarters, and payments for traveling expenses, telegraphing, etc. Both the North Dakota and the Wyoming laws prohibit political contributions from corporations.

Candidates and political committees must keep detailed accounts of election receipts and expenses, and file statements thereof with the secretary of state or with the county clerk at the close of the campaign. The Wyoming law requires statements from all persons expending more than $50.

The North Dakota law forbids pre-election promises of appointment and prohibits the insertion in papers or periodicals of paid political material unless it is stated that such material is a paid advertisement.

The violation of these corrupt practice laws is punishable by a fine not in excess of $1,000 and imprisonment in the county jail. For failure to file statements of expense a candidate is liable to a fine of $25 for each day's delay and his name may not be placed upon the official ballot until such a statement is filed.

The Wyoming law gives the circuit court of the county where statements of expense should be filed, exclusive original jurisdiction of all violations of the act, with power to declare the election of any candidate void. Prosecutions under this act are advanced on the court docket over all pending civil actions, and witnesses are not excused from testifying on the grounds that their testimony would render them criminally liable or expose them to public ignominy.

While the Wyoming law requires each political committee to operate through a responsible treasurer, this provision is more carefully covered in the Indiana statute. The latter state has followed the Maryland law more closely than any other, and has also borrowed the English plan of requiring candidates to work through "political agents." This latter provision is aimed at what has constituted a fruitful source of corruption, that is, the irresponsible distribution

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of campaign funds. These laws are drawn on the theory that funds should be expended only by such agents as have sufficient authority to bind their principals. The treasurer of a political committee is compelled to give a bond for the faithful performance of his duties. No one except a candidate may make any political contribution within six months of any election except to a political treasurer or agent. Corporation subscriptions may not be solicited at all and candidates' contributions must be voluntary. The purposes for which agents and treasurers may expend money are designated and include, in general, the holding of public meetings, conducting headquarters and the dissemination of information. All printed material must purport on its face to be printed by authority of the treasurer or agent and if published in a newspaper must be marked as an advertisement. Candidates may pay for their personal expenses in traveling and circulating letters, etc. but other expenses must not exceed a fixed scale dependent upon the number of electors in their district. Detailed statements of expense accounts must be filed by political treasurers and agents and by candidates. Failure to do so is penalized by fines not exceeding $1,000 for political treasurers and agents and $2,000 for candidates. Imprisonment for not longer than one year may be added to these penalties. No person is to be deemed elected to any office who has failed to file the required statements. Giving or receiving things of value to influence voters is penalized as a corrupt practice. Judges and corporations may make no contributions. Employers are forbidden to attempt to influence the votes of their employees through the posting of notices or the dissemination of political literature. Personation is also penalized.

Prosecutions for violation of the corrupt practice law may be instituted in the circuit court of any county in the district in which the candidate was voted for, by the petition of any defeated candidate or by ten qualified voters. Such action must be brought within thirty days. Trial is to be without jury unless one party desires a jury to be judge of the facts. If it be found that any candidate elected to any office in the state has been guilty of a corrupt practice through himself or his agents or through political committees acting in his behalf, the judge shall certify that fact to the governor who must within five days declare the office vacant. If the guilty candidate is a presidential elector or congressman, the judgment must be certified by the governor to the speaker of the house of representatives, if a

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state senator, to the president of the senate, and if a representative, to the house of representatives of the General Assembly of Indiana.

The duty is also imposed upon the prosecuting attorney of each county to prosecute for violations of this act.

These three laws, while they contribute little that is new to corrupt practice jurisprudence, embrace provisions which have been used with considerable success elsewhere. They may be expected to greatly decrease the contamination of elections in these states.

S. GALE LOWRIE.

Electoral Systems—British Royal Commission. The report of the Commission on Electoral Systems[1] contains much that should prove of value just at this time. The progress of the direct nominations movement is bringing to the front a recognition of the failure in many cases of the *plurality* vote truly to represent the wishes of the electorate. While of course well known before, the convention plan of nominations and the two-party system in our elections has not tended to make the deficiencies evident. Indeed, they very often failed to be of any importance in the determination of the result. But in recent years the so-called minor parties have become more prominent as more permanent, the independent voter is a factor to be reckoned with, and particularly the effect of three or more candidates for the same office in a direct nomination system has made the frequent failure of the plurality result to be truly representative, a matter of serious consequence.

This commission was appointed "to examine the schemes which have been adopted or proposed for securing a fully representative character to popularly elected legislative bodies," and of course its work has been built upon the conditions of Parliamentary elections. But its study and conclusions should also be of help to us in this country. Though obviously capable of considerable expansion the scope of the inquiry is limited to "the method of recording a vote, the method of determining the successful candidates, and the number of members returned by each constituency." Within this field the present English system is outlined; voting by placing a cross-mark opposite the name of the candidate, the election result determined by the "relative majority" (that is the plurality method), and for practically all the members of the Commons single-member constituencies, there being only 27 two-member constituencies out of the 643.

[1] Report: Cd. 5163. Evidence: Cd. 5352.

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This system is defined as "single-member election by relative majority. None has been devised more simple for the elector, more rapid in operation, more straightforward in result—advantages, in an instrument for use by a large electorate of varying intelligence, which it is difficult to over-estimate. But it suffers from the defects of its merits, a certain brutality and a roughness of justice which its opponents call by a harsher name, besides other defects to which, perhaps, no virtues correspond."

It is extremely significant that after such an admission the Commission should still recommend certain vital changes, the adoption of the Alternative Vote (popularly called in this country the "second choice ballot") where more than two candidates stand for one place, and the Transferable Vote as worthy of serious consideration as the most feasible scheme for producing proportional representation, though they do not as a Commission recommend its adoption "in existing circumstances." And even here, though the first recommendation is unanimous, with regard to this second one member, in a Note, states his dissent and declares that he would go further and report in favor of the second change as well.

The discussion of the proposal of a redistribution of members on the basis of equal electoral areas takes up but little space in the Report and is of no particular interest here.

A second group of proposals of betterment includes various Absolute Majority systems, and here the discussion touches us closely. The two plans which are seriously considered are the Second Ballot (or second election) and the Alternative Vote. The latter is of course interwoven with the more extended Transferable Vote in determining quotas for minority or proportional representation. How far the European countries have advanced beyond the acceptance of a mere plurality to elect may be shown by this terse statement. "It is a remarkable fact that, while the single member constituency is very general in Europe, the relative majority method is practically confined to English-speaking countries. All great European States, and most of the smaller ones, have rejected or abandoned it." And yet we Anglo-Saxons continue to use this system which often "actually promotes the return of the *least* popular candidate," in those frequent three, or four-cornered contests. And even these, as the Report points out, fail to show the full extent of the evil, for the fear of just such a result, the experience of what has happened in the past when the party vote has been "split," tends to keep out even the strong

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third candidate, perhaps I should say *especially* the strong third candidate, if he can be so kept out.

In European (Continental) countries however the way out has been found in the second election between (usually) the two leading candidates where there has been no true majority choice at first. This system is used in Austria-Hungary, France, Germany, Italy, Russia, and most of the smaller States with more or less important variations. It has been tried to some slight extent in this country, but the burden of yet another election is too great. The vote falls off, and the result aimed at is not achieved after all, for only a minority of the total electorate makes the final choice. The practical objections to the second election far outweigh its simplicity, its effect in at least cutting out the *least* popular candidate, and the fact that it involves no change in system. The "second choice ballot" the Commission considers open to less grave objections. It is of course admitted that no fully satisfactory solution of the problem has yet been devised. The Commission states that *both sides* urged strongly the failure of the present plurality system and the necessity for reforming it, and in finally turning to the Alternative Vote it declares that "if complexity must be avoided, perfect accuracy of result need not be insisted upon. All reasonable requirements will be satisfied by a system which will substitute an acceptable measure of justice for the present indefensible anomalies." The limitations of the plan are frankly pointed out, "but when all due weight has been given to them, the Alternative Vote remains the best method of removing the most serious defect which a single-member system can possess—the return of minority candidates, and accordingly we recommend its adoption in single-member constituencies." That serious conclusion is surely worth thought on the part of those who are endeavoring to better that same defect in our direct nomination laws. If we cannot practically reach a mathematically perfect result still something so much better than what too often now occurs should be worth a trial. And it would spike at least some of the guns sometimes used so treacherously against the success of the direct nominations system by those whose occupation is thereby seriously interfered with.

Finally the Commission comes to the consideration of that group of proposals based upon a demand for minority or proportional representation, proposals based of course upon the fundamental notion of two or more representatives of a given constituency. This part of the Report should especially appeal to the students of such questions

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as commission government for cities, the short ballot in general, and those changes in municipal government especially represented by the adoption of the general ticket in place of ward representation. The Report presents a careful study of the results of elections for a number of years and concludes in the first place that minorities actually have had considerable voice though not a representation mathematically equivalent to their number, of course. Hence the plans—the Limited Vote and the Cumulative Vote—designed to secure minorities against complete lack of representation are briefly dismissed as not only not necessary, but as involving objections which cannot be overcome. The Commission then turns to the large number of plans proposed to secure proportional representation, and by a sifting and elimination finally obtains as worthy of consideration for English conditions the three plans as in use in Belgium, recommended for adoption in France, and actually in operation in Tasmania, respectively.

The Belgian system is a strict List System by which candidates are presented by groups—as in our party columns—and a vote for the group counts for each member. The available offices for which these group members are candidates are then so apportioned among the groups as to give representation wherever the necessary quota of support has been obtained.

Certain objections in the Belgian system are attempted to be met by the proposals of a Committee of the French Parliament in a report of 1907. This plan eliminates the group vote—what would correspond to our "party ticket vote," provides that the elector shall cast as many votes as there are offices to be filled, and allows him to cumulate as many as he pleases on one candidate. The arrangement of names in the "lists" would be alphabetical, rather than determined by party managers, thus giving the advantage of first positions to chance of name.

The third plan seriously considered is the Transferable Vote, the system originally proposed by Mr. Thomas Hare, and modified and revised in the form proposed to meet certain general criticisms. Its fundamental characteristics are: a constituency returning several members, a voting plan which designates choice among all candidates standing, and a transfer of surplus first choice votes, above the required quota, to other candidates. In other words it is a general ticket with a "second choice" ballot and the canvass of the return so as to elect the candidates having actually the widest support.

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All three plans are declared to have certain conspicuous merits for the conditions laid down under the English system. Advantages and disadvantages are set forth at length, and the Belgian and French systems finally eliminated. "If, then, any system of proportional representation is to be regarded as likely to command acceptance under the existing conditions of our political life, it must be the Transferable Vote." Certain objections to this, also, both theoretical and practical, are set forth, some of them peculiar to this particular plan and others aimed at any scheme of proportional representation. These objections are: complexity, elements of chance, reduplication of votes, unwieldy size of constituencies, expense and other difficulties inherent in the organization of elections, bye-elections. And yet to these the Commission answers: "The application of the Transferable Vote to a large electorate is, then, feasible. The possible intrusion of an element of chance might create some prejudice against it, and the undoubted difficulty of bye-elections certainly would; but the issues at stake are so large that if the general case in favor of proportional representation and its effects, in and out of Parliament, were decided to be clearly made out, these defects are not serious enough to stand decisively in the way." The force of the argument, in other words, is less against this, or indeed any particular plan; it is rather against the system as such. It is a fundamental difference of opinion as to the theory and practice of government in this respect. Should the elemental difference once be resolved definitely in favor of proportional representation here is the plan which is not only feasible but so far the best suggested—and there have been some three hundred of such suggested plans, the Report tells us.

There being this fundamental difference involved, the Commission presents a summary of the whole argument pro and con as set forth in the evidence before them and in the literature of the subject. On the one hand it was urged in favor of the adoption of the proposal that these results would follow. "In the House of Commons all parties, the majority as surely as the minority, would find representation on the basis of their true strength in the country; small but respectable parties would be assured of a hearing and the independent member would once more be added to the counsels of the nation. In the constituencies the elector would obtain greater variety of choice, greater freedom, and with freedom the education of an enlarged responsibility; the candidate would regain independence from the

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pressure of small sections, and the member an enlarged sphere of usefulness."

Over against these, were urged objections to the proposed system or positive arguments in favor of the present system, which the Report summarizes under these headings: disproportionate majorities, advantages of a large majority, influence of minorities, complication of voting, disadvantages for the candidate, sectional pressure, rivalry between candidates, diminution of responsibility, and diminution of interest.

There can evidently be no definite measuring of these arguments, the one against the other. A common unit seems to be entirely lacking. Conclusions can only be the declaration of opinion, not the determination of mathematical results. It can, however, be stated, first, that it is impossible, a priori, to form any reliable estimate of what the more permanent results of the introduction of the system may be, and, second, that an immediate if temporary result would certainly be considerable confusion in the electoral system. "These considerations are not of course conclusive against the adoption of the scheme, for they would be valid in a greater or less degree against any large measure of reform, but they certainly suggest that a position of grave recognized injustice or of actual danger should be shown to exist to justify so drastic a change."

And in this respect the conditions in the six countries which have actually adopted various systems of proportional representation are pointed out, as indicating symptoms which may be noted as tending toward the adoption of this system or as showing the precedent conditions upon which, in some cases and from some viewpoints, its introduction may or even must be based. Such conditions are at least suggested by a large extension of the suffrage, by an equal balance of parties particularly in a small community, by a mixture of races or religions in a country, or by factional and party strife which may find some such reform the only way out of an impossible dilemma.

The final conclusions of the Commission have already been stated but may be here summarized again. The Alternative Vote (or "second choice ballot") is recommended for adoption where there are more than two candidates for one seat. The Transferable Vote is found to be the most feasible plan for proportional representation but cannot be definitely recommended here and now for adoption under existing conditions.

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The Report is well rounded out by valuable appendices which are as follows:

1. Explanations of various methods of election to fill one seat.
2. The alternative vote in Queensland and Western Australia.
3. Systems of election in force in other counties including statements as to proportional representation in Denmark, Finland, Servia, Sweden, Switzerland, and Wurtemberg.
4. The Belgian and French systems.
5. The Transferable vote.

This whole report is a mine of information, which cannot be otherwise obtained in this summarized and inter-related presentation. And it sets forth the results of the careful and thorough application of theories to certain definite fields of information which make it a study indispensable to any student of the subject.

C. B. LESTER.

Initiative and Referendum. On the eighteenth of February, the Wyoming legislature approved by the required two-thirds vote, an amendment to the constitution providing for the initiative and referendum for the passage of statute law and amendments to the constitution. The proposed amendment follows the general lines of the Oklahoma and Oregon constitutions, in that initiative petitions are accompanied by the complete draft of the proposed law or amendment to the constitution and filed with the secretary of state at least four months before the election at which they are to be voted upon. Referendum petitions, asking that laws passed by the legislature be referred to the people for approval, must be on file within ninety days of the final adjournment of the session at which the law was passed. The measures referred to the people are to be voted upon at the biennial general election.

The per cent. of legal voters required to present petitions for the initiative or the referendum is considerably in excess of that required by any state now using the initiative and referendum. The usual requirement is eight percentum of the whole number of votes cast for some designated state office, although ten percentum is required in Nevada and fifteen percentum for constitutional amendments in Oklahoma. The referendum petition is generally placed at five percentum. The proposed Wyoming constitutional amendment places the required percentum for both initiative and referendum petitions upon the almost prohibitive basis of twenty-five percent.

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of the whole number of votes cast for secretary of state at the last preceding general election.

A majority of the electors voting on the measure is required to enact any initiated measure or repeal an act of the legislature, but at least one-third of the electors voting at the election must sanction such approval or repeal. Constitutional amendments require for adoption the approval of a majority of the electors voting at the election. Initiated laws are not subject to the governor's veto, but are subject to repeal and amendment by the legislature as are other statutes.

The Oregon provision that the filing of a referendum petition upon any law passed by the legislature holds such law in abeyance until its approval by the people, has not been followed. The filing of a referendum petition against any act does not affect its validity until it is disapproved by the people. Appropriation measures are not subject to referendum. In attempting to preclude fraudulent petitions, the proposed amendment prescribes in detail the form petitions must take. The text of all measures must be published for twelve consecutive weeks prior to the election as constitutional amendments are now published. This proposed amendment will become a part of the constitution of Wyoming if it is approved by a majority of the electors at the next general election.

S. GALE LOWRIE.

Initiative and Referendum Municipal Legislation. The California legislature, at the session just closed, granted initiative and referendum powers to the voters of municipalities. Ordinances may be initiated by filing with the clerk a draft of the measure, accompanied by a proper petition. If the petition contains a number of signatures equal to twenty-five percent of the votes cast at the last general municipal election and is accompanied by a request for a special election on the question, the council must pass the measure without alteration or submit it at a special election held within thirty days. Special elections must not be held at intervals of less than six months. A petition signed by ten per centum of the legal voters is sufficient to refer an initiated ordinance at the next general municipal election.

The legislature has incorporated into this law a provision not found in other initiative and referendum measures, *i. e.*, the city council is given the power to propose amendments to any initiated

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ordinances. The proposed ordinance, with its amendment, is placed upon the ballot, and the people are given the option of accepting the ordinance with or without the amendment, or of rejecting both. This is a modification of the plan, followed in the Maine constitution and in Switzerland, of allowing the legislature to suggest measures competing with those initiated by the people. It is an attempt to obviate the criticism frequently directed against initiated measures that they are crudely constructed, but it is open to the objection that it may complicate the issue before the people. The operation of this provision will be watched with considerable interest.

Measures adopted by the electors are subject to amendment or repeal only by a vote of the electors unless it is otherwise provided in the measure itself. Those filing initiated ordinances may at that time present a written argument of not more than three hundred words in favor of the ordinance. This argument, together with any filed by the council in opposition, is to be printed on the sample ballot. If conflicting measures are approved by the people at the same election, the one receiving the highest affirmative vote shall control.

No ordinance granting a franchise may go into effect before thirty days after its passage nor may any other ordinances except those for the immediate preservation of the public peace, health or safety and which contain a statement of their urgency and are passed by a four-fifths vote. If during this time a petition signed by twenty-five percent of the voters is filed against the passage of the ordinance, its operation shall be suspended. Such an ordinance must be repealed by the council or referred to the voters at a general or special election, and must not go into effect unless approved by a majority of the electors voting upon it. The council may of its own motion refer measures to the people. S. GALE LOWRIE.

Labor Legislation Pending—Rhode Island. The trend of labor legislation at this 1911 session follows the distinct line of providing compensation for employees for personal injuries received in the course of their employment. Although the greater number of these bills are modeled upon the tentative draft of the uniform workingmen's compensation act, that measure which seems most likely to become law at this session is a resolution providing for a commission on industrial accidents. It has already passed the senate in substitute form providing for a commission to be appointed

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by the governor, with the advice and consent of the senate, to consist of seven persons, one of whom is to be a representative of the labor interests; one a representative of the employing interests; one a lawyer satisfactory to the labor interests; one a lawyer satisfactory to the employing interests; one a former member of the judiciary of the state; and two other citizens of the state. The work of this commission will be to consider the subject of industrial accidents and the liability of employers therefor; to investigate and report upon the state of the law on the subject in the United States, and in foreign countries; and in particular to consider and report to the general assembly by act or otherwise, upon the question whether workmen should receive a certain definite and limited compensation for all accidents in industry, and upon the questions of the fellow servant doctrine, so called, and upon the doctrine of assumed risks. The sum of one thousand dollars is appropriated for the use of this commission to be divided into commissioners' salaries, $100 each, clerk's salary, $150 and expenses of $150.

There is a very strong lobby for the establishment of an eight hour work day for mechanics, workmen and laborers employed by the state, and cities and towns therein, and for the fixing of a rate of wages of employees on public works at $2 per day, with a stipulation to that effect made a part of all contracts to which the state, or any municipal corporation therein, is to be a party, provided that this act does not apply to persons employed yearly in any of the public institutions of the state, or any city, county or town.

If, in the erection of an iron or steel framed building, the spaces between the girders or floor beams of any floor are not filled or covered by the permanent construction of the floors by the contractor or the owner of the building before another story is added to the building, a close plank flooring must be placed and maintained over such spaces, from the time when the beams or girders are placed in position until the permanent construction is applied. This and other provisions for temporary flooring are the subject matter of several bills looking toward the protection of employees during the erection of buildings.

GRACE SHERWOOD.

Recall. The holder of any elective office in any municipality in California, who has held office for four months, may be removed by the electors, in conformity with a law passed during the 1911 session of the California legislature. The procedure for the recall

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is similar to that in use in a large number of cities. Petitions signed by twenty-five percent of the registered voters must be filed with the clerk and be accompanied by a statement of the grounds upon which removal is sought. This statement is printed upon the official ballot. Every petition must be examined by the clerk and if it is not sufficient an opportunity is given for its amendment; when found sufficient it is sent to the council. If no municipal election is to occur within sixty days, a special election must be called by the council to choose a successor to the incumbent whose removal is sought. Candidates for the office in question are nominated as in the general elections. The name of the incumbent is placed upon the official ballot without nomination unless he requests otherwise. The person receiving the greatest number of votes at such an election is declared elected and if it be other than the incumbent, the incumbent is deemed removed. The successor to any officer so recalled holds office during the unexpired term of his predecessor subject to the recall provisions of this act. Any one recalled or who has resigned, while recall proceedings were pending, is ineligible for an appointive office for one year.

Among the more interesting features of this law is a provision that a single petition may be circulated against more than one officer, and that a single election may accomplish the recall of a number of officials. The provision that the election is to be held at the time of the general election, if such election occurs within sixty days, is new among recall laws, and the provision that municipal officials must hold office for four months before being subject to recall is unusual, yet these provisions seem logical additions to the regular recall machinery. S. GALE LOWRIE.

Spanish Labor Legislation Since 1899. Though the industrial development of Spain has been slow and is still far behind most other European States, her industrial population is large enough to demand attention to its grievances. Two regions, Catalonia in the Northeast and the Basque Provinces in the North, have nearly half the artisan population of all Spain, and have been the centers of numerous strikes and incipient insurrections in the past two decades. In the mining region of the Province of Vizcaya there have been seven local strikes and four general strikes between 1890 and 1906. The grievances of the Spanish artisans are unquestionably great; but not until the past twelve years has the government shown signs of awakening to

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their importance. In 1883 on the initiative of Señor Moret, Minister of the Interior, a commission was appointed to study means of bettering the condition of both artisans and peasants and questions relating to labor and capital. Under its auspices an investigation was made and a report published in 1889 the conclusions of which were very pessimistic. In 1890 the commission was reorganized and finally in 1903, the Institute of Social Reforms was created to study the labor problem in Spain and elsewhere and to publish its findings, to compile statistics, to inspect the condition of the workers, and to give advice as to needed legislation. The Institute has thirty members, eighteen chosen by the government, and twelve elected, six by the employers and six by the laborers. Its membership is of a high quality, including the leading sociologists of the country, and representatives of all creeds and political parties. During the seven and a half years of its existence the Institute has done excellent service and the legislation it has secured is of vital importance for the protection of the laborer.

The Employers' Liability Act of January 30, 1900 was due to the Commission preceding the Institute but the latter has secured some important modifications of it. The law declares the employer liable for all accidents to artisans in the course of their work unless due to some factor foreign to the work. Accident is defined as any bodily injury received during work or as a result of work done outside his own home by any workman employed by any individual employer or corporation. An original feature of the law is the distinction made between degrees of disability. Temporary disability must last a year at least and entitles the injured employee to an indemnity of half his ordinary daily wage, to be paid for every day including Sundays and fête days till he is able to return to work. In case of partial permanent disability, the employer must put the laborer at work which he is still able to do without decreasing his wages, or pay him an indemnity equal to a year's wages. Absolute permanent disability, and permanent and complete disability for that trade or occupation formerly pursued, entitle the injured employee to an indemnity equal to his wages for two years and a year and a half respectively. In case of temporary disability the indemnity begins on the day of the accident. If the accident results in death the employer must bear the funeral expenses, and pay the widow, legitimate children under sixteen years of age, and the grandparents indemnities varying in amount in proportion to the victim's average

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annual wages. In case the accident is due to the employer's negligence, the above indemnities must be doubled, and negligence consists in not conforming wholly to a series of regulations to ensure the safety of employees enumerated in an ordinance of August 2, 1900. The law does not, however, provide for any compulsory insurance nor for a guarantee fund, but merely allows employers to insure themselves. Thus it can have little effect in case the employer becomes insolvent.[1]

On March 13, 1900 a law was passed to protect women and children which affects all industrial and commercial establishments except agricultural labor and work done at home. It forbids children under ten years of age to be employed, though some exceptions are made in cases where the children can read and write, and prohibits children under fourteen years to work over six hours in industrial, or eight hours a day in commercial establishments. In general it limits to eleven hours a day the labor of all persons under the protection of the law. Night work is forbidden for children under fourteen, and those under sixteen are not allowed to work under ground, in industries using inflammable materials, or in cleaning motors or moving machinery. Children under sixteen and women not of age are not to work where there are printed pamphlets or pictures likely to inflict moral injury on them. Children under fourteen must have two hours each day for primary and religious instruction, and the employer must provide a school for this if there is none within two kilometers. Special detailed provisions were included in 1900 and greatly amplified in 1907 for the protection and benefit of women employees previous to, during, and immediately following maternity.

The Sunday Rest Law of March 13, 1900 forbade Sunday labor for women and children under eighteen and in 1904 this prohibition was made general for all work in the performance of which the physical faculties predominate and which is carried on in public or can be seen from a public road. Certain general exceptions were made such as domestic service, public spectacles, artistic work and teaching, sale of food, care of domestic animals, etc. Other sufficiently flexible exceptions were made for the continuance of work the stoppage of which would cause great damage or public inconvenience. No law as yet has been passed to limit the length of a day's work for artisans, but in 1902 a decree of the Minister of Finance fixed eight hours

[1] This law of 1900 is described in detail by L. Léger, "La Législation du Travail en Espagne," in *Annales des Sciences Politiques*, July 1906; and by Deléarde, Etude sur la loi du 30 Janvier 1900," in *Bulletin du Comité permanent du Congrès international des accidents du travail*, tome XV, 1904.

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as the day's work in the State mines and factories and provided that each hour overtime be paid for at the rate of one eighth the daily wage.

July 12, 1906 the Cortes amended several articles of the Civil Code in the interest of workingmen who have been forced to borrow to tide over temporary difficulties. It was made illegal to attach or garnishee wages not amounting to over two and a half pesetas per diem; and, in case they amount to more than that, a minimum average of two and a half pesetas a day remains unattachable.

In 1908 and 1909 considerable new legislation was made to deal with the relations between capital and labor and questions growing out of these. The first of these laws[2] was that providing for the establishment of industrial tribunals at the capital of each judicial district whenever asked for by interested parties. These courts will be composed of a presiding judge, three jurors and an alternate chosen by the interested workmen from a list presented by employers, and the same number chosen by the employers from a list presented by the workmen. The court then constituted will have jurisdiction over differences between employers and employed about the non-fulfillment or annulment of contracts to provide workmen, contracts to work, and apprentices' agreements; and over differences regarding the application of the Employer's Liability Act which were till 1908 under the jurisdiction of the ordinary civil courts. Appeal from the decisions of this court lies to a second court composed of the presiding judge, seven jurors and two alternates chosen from the employers, and the same number chosen from the employees.

Another law of 1908 provides Councils of Conciliation and Industrial Arbitration. When a strike is about to be declared, the workmen to take part must give the president of the local "junta" of social reforms written notice of their grievances and the names and residences of the employers affected at least twenty-four hours before the strike; and likewise when one or more employers contemplate a partial or complete stoppage of work in their establishments, they must warn the local "junta" a week in advance in a similar manner. Failure to comply with these requirements is punishable by a heavy fine. The "junta" then is to hand the statement of grievances to the other parties and ask at once whether its good offices will be accepted. If so, the president is to appoint from the lists made according to the Industrial Tribunals Law three employers and three employees to act as jurors with him. In case there are no such lists choice is

[2] Complete text in *Bulletin de l'Institut des Réformes Sociales*, Juin, 1908.

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to be from the members of the "junta." The Council thus formed is to meet as quickly as possible, hear the parties, and propose terms of settlement. During this time the employers must not shut down nor the employees stop work. If the conflicting parties cannot be brought to agreement, the Council is to have the parties appoint arbitrators or a single arbitrator with full power to act for them. The parties are to agree to the terms of the compromise and any dispute as to its meaning is to be settled by the arbitrators who are to decide how long it is to last. If both parties do not agree to the compromise, or a strike or lock-out follows, the Council is to begin over again if it seems best; but, if conciliation and arbitration fail a second time, no further attempt is to be made except at the signed request of both parties. The electoral bodies provided in the Industrial Tribunals Act may establish permanent Conciliation Councils divided into sections corresponding to various trades or different localities. Compulsory arbitration is, however, not yet provided for.

January 27, 1909, the Conservative Minister Señor Maura secured the passage of a law dealing with strikes and unions and recognizing the right of employers and employed to organize and strike. This law designates as strike leaders all persons holding office in a union or corporation, or any who have aroused the workmen to strike by speech or writing, or have announced the strike; and makes these leaders responsible for illegal acts of strikers. It imposes the maximum penalty on a person who incites to an illegal act and only the minimum penalty on the person who actually commits it. Warning of strikes which will tend to stop water, light or railway service, or will leave the sick or those in hospitals without care, must be given to the authorities eight days in advance; and five days in advance, if they tend to stop the street railway service or deprive the people of any locality of some common article of food. Legally constituted unions must not in the course of a strike or lock-out prevent any member from exercising his rights freely, including that of withdrawal from the union. As might be expected, this law has been very severely criticised by many of the republicans and socialists on the ground that it tends to make a successful strike extremely difficult.

In addition to the above laws the Iustitute of Social Reforms has much more social legislation under discussion and seems to be doing all in its power to alleviate the condition of the Spanish artisans.

CLARENCE PERKINS.

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Tenement Houses. Although the unsanitary and uneconomic conditions of tenement houses in most of our large cities have been exposed to public view time and again by social research workers and special commissions, it seems indeed strange that amendatory legislation should be so bitterly resented. A brief survey of the fight for the passage of the law in New Jersey will show the opposition that supporters of the bill meet in nearly all states. The New Jersey law is most minute in detail and thorough in its requirements. The movement for better housing conditions in this state had its origin in the efforts of several private organizations, such as the Civic Sanitation Society of the Oranges. Through the assistance of the several members of the present board of tenement house supervision the interest of Governor Franklin Murphy was enlisted and during the legislative session of 1903 a joint resolution was passed by the legislature authorizing the appointment, by the governor, of a commission to investigate the condition of tenement houses throughout the state and to report to the next succeeding legislature with recommendations. The commission consisted of the present membership of the board, with the exception of one member who has succeeded one of the original investigators. The commission made an exhaustive study of tenement house conditions in the state and reported to the legislature with a draft of a bill which was patterned somewhat after the tenement house law of New York, rewritten to better suit existing conditions. One special feature of the bill was that it applied to the whole state rather than to cities of the first class, as such acts do in most of the other states that have laws of this sort. The bill was introduced into the House of Assembly and passed the house with the unanimous vote of the members. It was not until the bill appeared in the Senate that the opposition of the owners of tenement property, the speculator builders and lessees of entire tenements became aroused. A powerful lobby was organized and a determined fight was waged in the senate against the bill. It was attacked in detail, section by section, and while the opposition did not succeed in defeating it, it did succeed in killing several features, reducing the dimensions of the courts, etc., and forcing other changes in the provisions of the bill. The measure passed the Senate with the requisite number of votes without one to spare on the last day of the session. Governor Murphy signed the bill the same night and then promptly appointed the board so that the new law might become operative at once.

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Wisconsin passed a law in 1907, but the Supreme Court declared it to be unconstitutional (Bonnett *v.* Vallier et al.) There were ideal provisions in this law and another law embodying these same ideal provisions has been recommended. In 1909 two acts became law in this state, one regulating the construction of apartment houses, boarding and lodging and tenement houses in cities of the first class, and the other, relative to the improvement and regulation of sanitation in apartment, tenement, lodging and boarding houses in cities of the first, second and third classes.

New York's tenement house investigation commission was appointed by the governor in 1900 to report at the next general assembly concerning tenement houses in first class cities, their condition as to construction, safety, rentals, and the effect of tenement house life on health, education, savings and morals. In accordance with the recommendations of this commission a tenement house act is now in force for regulation in cities of 250,000 population. Each city has its own department or inspector as the case may be. Connecticut has a general state law regulating conditions in cities of 20,000 inhabitants, although this law may apply to smaller cities if the city ordinances so provide. The act is enforced by all inspectors of buildings, fire chiefs, or the officer or officers who issue building permits. In some cases, as in Massachusetts the provisions of the building code supply the necessary restrictions for tenement houses in the city of Boston, the building regulations for cities of the first class cover all essential features of a tenement house law and these regulations are enforced by the bureaus of building inspection, fire wardens, police departments and other municipal officers under whose jurisdiction this enforcement would naturally fall. In many cases ordinances of city councils and the mayors regulate conditions without the aid of a state law.

Tenement house conditions in different cities vary in such degree that special investigation is necessary for individual cases. The necessary provisions in a tenement house law must cover adequate protection against fire, sufficient light and ventilation, and in particular the problem of sanitation, with definite naming of the enforcing board. In some cases a special commission appointed by the governor to consider in detail the phases of the problem is most essential, but if interested social workers have already done this work, perhaps this special commission can be dispensed with. In Rhode Island, through the efforts of the Bureau of Social Research, a study of

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existing conditions has been made and a tentative draft of a tenement house bill drawn, and introduced into the legislature. This act is modeled more or less upon the New York law and in brief covers the following provisions: (1.) Provisions for the construction of new tenements; (2.) provisions for the alteration of old tenements and the changing of other structures into tenements; (3.) improvements; (4.) maintenance; (5.) methods of procedure.

"A tenement house" is defined as any house or building, or portion thereof which is rented, leased, let or hired to be occupied by two or more families, independently of each other, and doing their cooking upon the premises. A tenement house within the fire district of Providence may occupy 85 per cent. of a corner lot and 70 per cent. of any other lot, while in the other cities of the State and outside of the fire district in the city of Providence, tenements may occupy 80 per cent. of a corner lot and 60 per cent. of any other lot. The height of buildings is limited to the distance between building lines on the widest street upon which the tenement stands. Courts are limited to 12 feet square, if the building is 48 feet high, and an increase or decrease of one foot square for every 12 feet of height above or below 48 feet. All courts are to be provided with a direct entrance from the street and connected with the yard, and must be provided with proper drainage at the bottom and no covering at the top. The lighting of rooms, ventilation, size of windows, alcoves, chimneys and fireplaces, the public halls and their windows and skylights and the windows for stair halls are all provided for. Basement and cellar rooms are not to be constructed unless they comply with the number of provisions which shall make these rooms practically as sanitary as those above ground level. Cellars must be damp-proof and must be constructed in a sanitary manner.

All tenement houses of four stories or over shall have the first floor constructed of fireproof material, with iron or steel beams, and fireproof flooring, etc. The provisions for compelling cleanliness and thorough sanitation are exhaustive. Every tenement house must have a janitor or housekeeper, or someone living in the house in charge of the premises so that the building may be kept in a cleanly condition. The public halls are expected to be lighted until 10 o'clock at night, and the lowest hall shall be provided with a light from sunset to sunrise.

Another chapter provides for the most approved plans, the proper method of recording and inspecting buildings, and other measures

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necessary for the enforcement of the law, both by the building inspector and the health department. Large powers are given to the health department, so that its officials can properly combine its health regulation with house legislation.

There has been one hearing upon this bill, but the opposition now is very strongly against it, though it is quite possible that this measure may pass in a modified form. The pending bills in Indiana were defeated and a similar fate may be waiting for the Rhode Island measure. GRACE SHERWOOD.

Congressional Legislation. In one of the longest messages ever delivered to Congress, President Taft laid out a comprehensive program of legislation for the short session which convened in December and closed March 4th. Many of his recommendations were unheeded, however, and Congress adjourned with very little to its credit beyond the appropriation acts.

Some of the recommendations which were not enacted into laws were: civil government of Alaska under a commission to be appointed by the president; reciprocity with Canada; modification of injunction proceedings; simplification of procedure in the federal courts; a permanent tariff commission; application of civil service reform to the consular service; volunteer army reorganization; a comprehensive conservation plan supplementing the laws enacted at the previous session; a national bureau of health; increase of second class postal rates; civil service retirement; appropriation to enable the interstate commerce commission to make physical valuation of railroads; legislation for the District of Columbia; ship subsidy; and eight hour day in its application to ship building.

Some of the specific recommendations of the president which were adopted were: fortification of the Panama canal; locomotive boiler inspection; appropriation to carry on investigations under the direction of the President into methods of economy and efficiency in the government business; government ownership of consulates and embassies abroad; protection of watersheds and conservation of navigable streams designed to enable the acquisition of the long talked of Appalachian forest reserve.

Other measures defeated or not acted upon were: constitutional amendment requiring election of United States senators by the people; reapportionment of representatives in Congress according to the new census; admission of New Mexico and Arizona into the Union; parcels

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post; legislation permitting states to regulate interstate commerce in liquor.

Other measures of general interest enacted were: bonding of federal employees; provision for the erection of a Lincoln memorial at Washington at a cost not exceeding $2,000,000; and a complete revision of the laws relating to the federal judiciary.

Although the tariff commission was defeated in the last hours of the session by the refusal of the house to concur in the senate amendments, an appropriation of $225,000 was made to enable the president to secure information to assist him in the discharge of the duties imposed upon him by the tariff law of 1909 "including such investigations of the cost of production of commodities, covering cost of material, fabrication and every other element of such cost of production as are authorized by said act, and including the employment of such persons as may be required for such purposes." The work of the tariff board will thus be carried on as before under the direction of the President. The President's recommendation for the continuance of the investigation into the methods of economy and efficiency of government business, begun last year, was carried out, and $75,000 besides the unexpended balance of last year was appropriated for the purpose of making such investigations under the direction of the President. A report to the next regular session of Congress is required.

The session produced a monumental work in the act to codify, revise and amend the laws relating to the judiciary. Its most important feature is the abolition of the circuit courts thus making the district court the only court of first instance for all cases in which jurisdiction is not specifically given to other courts. By this codification the courts of the United States are organized as follows: District Courts varying from one to four in different states according roughly to population, presided over by a district judge, and having original jurisdiction; Circuit Courts of Appeals in nine circuits having three judges each and possessing only appellate jurisdiction; a Supreme Court consisting of one chief justice and eight associate justices having appellate jurisdiction and also original jurisdiction in certain cases; a Court of Claims consisting of one chief judge and four associates having, as its name implies, original jurisdiction in cases of claims against the United States; a Court of Customs Appeals, created by the tariff law of 1909, consisting of a presiding judge and four associate judges to handle cases arising under the tariff

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law; a Commerce Court, consisting of five members chosen in the first instance by the President and afterwards assigned by the Chief justice from among the Circuit judges. This court was created in 1910 as a part of the amendments to the interstate commerce law. It has jurisdiction over cases appealed from the interstate commerce commission in certain cases.

One of the subjects receiving the fullest consideration was the resolution for an amendment to the constitution favoring the direct election of United States senators. Prior to this, the House had passed the necessary resolution five different times and each time the Senate had refused to act or had acted adversely. The proposition came nearer to passing this time than ever before and the whole trend of events makes it reasonably certain that the attempt will succeed in the very near future. In the meantime, the states have been acting on resolutions favoring the change and the necessary number of states to require it has almost been reached. The direct primary method is being applied rapidly and twenty-one states now use it in the nomination of candidates. Two of these states, Oregon and Nebraska, secure direct election by a system of candidate pledges and California has just adopted the same method.

Reciprocity with Canada was brought forth by the President early in the year as a result of a reciprocal treaty arranged between Secretary Knox and Sir Wilfred Laurier. This agreement makes the duty free on a long list of articles upon which duties now range up to sixty percent. Another large list will be greatly reduced. The main articles placed upon the free list are food products, undressed lumber, wood pulp, print paper, barbed wire and various minerals used in manufacturing. Those which are causing the principal contest are farm and dairy products, fish products, lumber and wood pulp.

The bill carrying into effect the agreement passed the house of representatives but the senate failed to act. President Taft called an extra session promptly to consider the subject. The agreement must, under its terms be enacted as a whole. Any amendment completely abrogates the agreement between the two countries.

The third important measure which received active consideration was the tariff commission bill. The idea of a tariff commission is very recent, a bill having been introduced into the Senate by Senator Beveridge the first time in 1908. The force behind it became so great that a provision was forced into the Payne Aldrich tariff bill permitting

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the President to employ experts to aid in carrying out its provisions and providing a liberal appropriation. This left the matter entirely in the hands of the President but gave the board no authority except such as the President might assume by stretching the provisions of the law. A board of three experts was appointed and investigations carried on. At the following session an attempt was made to make the board over into a tariff commission with sufficient powers but failed. The last session repeated the attempt but failed in the closing hours though the appropriation was continued as stated above.

These three measures are left as the principal inheritance of the special session of the sixty-second congress which is now in session.

JOHN A. LAPP.

Constitution; Indiana. The General Assembly of Indiana passed a bill for a new constitution and it will be presented to the voters at the next general election in November 1912.

The revolutionary character of this process has attracted wide interest. Indiana's constitution provides a method of amendment by passing two legislatures and receiving a majority of all votes cast at the general election at which it is submitted. No provision is made for a constitutional convention or other method of revision.

The proposed constitution which emanated from Governor Thomas R. Marshall seeks a short cut to revision by merely passing one legislature and being submitted to the people. The theory upon which the proposal is based is, that, since no provision is made for revision, the legislature is authorized by its inherent powers to formulate a constitution and present it to the people.

The bill of rights contains one important change in the addition to section 12: "But the general assembly may enact a workmen's compulsory compensation law for injuries or death occurring in hazardous employment. In enacting such a law the general Assembly shall have the right to define hazardous employment."

The suffrage qualifications are changed to require citizenship and a twelve months' residence in the state instead of the present provision which permits a person who has declared his intentions to become a citizen and has resided six months in the state to vote. The payment of a poll tax for the year of the election and for the previous year is required. The tax must be paid at the spring payment which is made in May. The general assembly is directed to make a registration of all voters to November 1, 1913 and thereafter no person,

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not then registered, shall vote who cannot read the constitution of the state in some language. Residence in the state is lost by reason of absence for more than twelve months except on business for the state or federal government unless a notice is filed with the Clerk of the Circuit Court.

A new method of apportionment is provided. Indiana is now apportioned into senate and representative districts by the grossly unjust method of giving to each county, or number of counties forming a district, their quota according to population and then combining the excess if any, of the larger counties with smaller counties to form joint districts. If a county has two or more senators or representatives they are voted for, not by districts of the county but by the whole county. Thus Marion county elects four senators by a vote of the whole county. The population at the last apportionment gave the county a slight excess over the quota for four members and this was combined with two smaller counties to make a joint district, but all the voters of Marion county vote for this joint senator as they do for their own four and thus overpower the small counties. The new constitution gives to each county one representative and an extra representative for each full quota and fractional surplus of half a quota in excess of the first quota. Senators are apportioned according to population and no change is made in the method now in vogue as above described as to them. The limit of sixty days on legislative sessions is changed to one hundred days. The original draft made a divided session with an interval of sixty days between. The legislature is permitted to pass special charters for cities.

The veto of the governor which now requires only a majority of both houses to overcome and which amounts merely to the repassage of the measure, is strengthened by requiring a three-fifths vote to over ride the veto. The governor may veto items or clauses in any appropriation bill.

The term of office of all elective administrative officers is made four years to conform to the term of the governor.

County administrative officers are given a term of four years and made ineligible for more than four years in any period of eight years.

The supreme court is increased from not less than three nor more than five to not less than five nor more than eleven. Prosecuting attorneys in judicial circuits are to be elected for four years instead of two.

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The initiative, referendum and recall may be adopted whenever twenty-five percent of the voters of the state petition for such laws.

The new constitution permits the General Assembly to provide for qualifications to practice law. The present constitution expressly permits all electors to practice law.

Some new provisions for amendment are provided. An amendment need pass only one General Assembly and is then presented to the people and a majority of the electors voting thereon determine the result. Any political party may declare for or against an amendment and the declaration is then to be made a part of the party-ticket. The door is closed to future revisions in the manner in which the new constitution is formed by the provision that the electors must approve the calling of a convention before a revision can be submitted to the people. It is provided the constitution shall be submitted at the general election in 1912 and any party may declare for or against it and have its declaration placed on the party ticket.

The result of the radical departure from the usual methods of constitution making will be watched with interest. The changes proposed are in the main such as a majority of the people would approve but the method is so open to doubt as to its constitutionality that the progress before the people and in the courts to which it will inevitably come, will be of the greatest interest.

JOHN A. LAPP.

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CURRENT MUNICIPAL AFFAIRS.

WILLIAM BENNETT MUNRO.

The city of Boston is considering a proposal to establish an incinerating plant for the disposal of the city's refuse and garbage. During the last ten years the city's wastes have been handled by the New England Sanitary Products Company which has utilized a large portion of the garbage at its reduction plant on Spectacle Island in Boston Harbor. The contract of this Company expires on January 1, 1912, and the Company is not to renew it under existing terms. The city advertised its willingness to make a new contract but received only one tender, that of the Boston Disposal Company, which offered to undertake the work of disposal at a cost to the city of about one quarter of a million dollars per year, the city to do the collecting and to provide a number of receiving stations. This proposal did not seem satisfactory to the city authorities and new bids are being advertised for; but in the meantime the matter of an incineration plant is under consideration. The experience of Boston in this matter discloses what seems to many to be a weakness in the city's new charter. It is stipulated in one of the clauses of this document that all municipal advertising must be confined to the City Record, an official publication issued weekly by the municipality at its expense. This periodical, however, has an extremely limited circulation and city advertisements appearing in it evidently do not reach any considerable constituency. A few months ago the city advertised a lighting contract and only one bidder responded. This was a local concern and it submitted a figure which the city government regarded as being too high.

The National Board of Fire Underwriters has recently issued through its Committee on Fire Prevention a pamphlet on *The Desirability of a High Pressure Fire System in the City of Boston.* The suggestions advanced in this pamphlet have received careful consideration from the Mayor and the City Council and legislation permitting the city to install a high pressure system has been requested. It is probable that a system covering the business district of the city will be installed during the course of the next few years.

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Boston-1915 has published in booklet form a general syllabus of its aims and undertakings. The booklet contains a short history of the organization, a statement of its general and specific aims, a list of its accomplishments since the movement began, a discussion of activities in contemplation, and a summary of the work carried on by its various conferences.

Two interesting publications just issued by the National Municipal League are *The Relation of Civil Service Reform to Municipal Reform* by the late Carl Schurz, this being a reprint of an address made to the League in 1895, and *The Man in the Pigeon-Hole*, by John McAuley Palmer. The latter is a humorous discussion of the means by which officers of city government are often kept in control by public service corporations.

A small pamphlet entitled *The Practical Operation of the Initiative and Referendum*, which contains some interesting tables of figures, has been issued by the City Club of Chicago.

The Bureau of Municipal Research of Philadelphia has published as its first report a discussion of *The Weights and Measures Situation in Philadelphia*. The report sets forth the results of an elaborate investigation which officers of the Bureau recently undertook and contains a digest of the existing laws and ordinances relating to this department, together with suggestions in the direction of improving the present system.

Delegates from twenty-two New York cities held a meeting in February at Rochester, New York, and arranged to organize the Commission Government Association of New York State. Professor H. C. Fairchild of the University of Rochester was selected as first president. The professed object of the new association is to secure the establishment in all the municipalities of New York State of "a business form of government on thecommission plan."

A Massachusetts Municipal League has recently been organized, the organization meeting held at the Boston City Club in March being attended by the representatives of a dozen or more cities of the Commonwealth. The officers of the League for the present year are as follows: President, J. M. Head, Brookline; First Vice-President,

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Professor A. B. Hart, Cambridge; Second Vice-President, L. E. Bennink, Lawrence; Secretary, C. S. Millet, Brockton; Treasurer, A. L. Winship, Melrose.

The University of Oregon has undertaken the creation and maintenance of a Library of Municipal Reform for use not only by its own students, but by city officials and members of the various municipal organizations of the state. The library will contain official data of all sorts, together wth literature bearing upon every branch of municipal reform.

The third Conference on City Planning will be held on May 15 to 17 at the City Hall in Philadelphia. There are to be seven conference sessions devoted to Harbor and Dock Development, Public Buildings, Streets, Building Regulations, Municipal Real Estate Policies, The Finance of City Planning, and The Problem of Securing City Planning Legislation.

Announcement is made of the first American International Municipal Congress and Exposition, to be held at Chicago from September 18 to 30 next. The Congress will be attended by municipal officials and duly appointed delegates from all the principal cities of America and Europe, and invitations will be extended to the members of all national or state organizations which concern themselves with any branch of civic work or municipal administration. Papers will be presented on different phases of municipal government and there will be a number of special conferences. The exposition will comprise municipal exhibits of every sort and will give particular attention to displays of apparatus and materials used in the various city departments. The affair is to be conducted under the official auspices of the city of Chicago assisted by various local organizations such as the Chicago Association of Commerce, the Citizens' Organization, the City Club, the Civic Federation, and the Industrial Club. The Commissioner General of the Municipal Congress is Hon. John MacVicar of Des Moines, and the General Manager of the exposition is Edward H. Allen of Chicago.

Something on a much smaller scale is being attempted during the present spring months by the city of Toledo, Ohio. This is a municipal exhibit showing the organization and work of the various city departments. An interesting feature of the exhibition is the use of moving

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pictures as a means of making clear to citizens the mechanism of such branches as the fire and police departments.

Arrangements have been made at Harvard University for the establishment of a Bureau of Research in Municipal Government. The bureau will be maintained by an annual gift given to the University for the purpose by Messrs. Frank Graham Thomson and Clarke Thomson of Philadelphia, and it is expected that it will be in operation at the opening of the next college year.

A volume on *Municipal Chemistry* just issued under the general editorship of Dr. Charles Baskerville contains a series of important papers on topics relating to municipal administration. Among these are chapters on "Sanitation" by the general editor; on "Municipal Water Supply" by Dr. C. T. Darlington; on "Food Adulteration" by Dr. H. W. Wiley; on "Street and Road Construction" by A. S. Cushman; on "Street Sanitation" by W. H. Edwards; on "Disposal of City Sewage" by C.-E. A. Winslow; on "The Smoke Problem" by Dr. P. B. Parsons; and on "Parks, Gardens, and Playgrounds" by N. L. Britton. The volume contains over 500 pages and is profusely illustrated.

Other recent books are *Shade Trees in Towns and Cities* by William Solotaroff (New York; John Wiley & Sons, 1911, 270 pp.); *Corruption in American Politics and Life* by Professor R. C. Brooks (New York: Dodd, Mead & Co., 1910, 304 pp.); *A Digest of Short Ballot Charters* by Professor C. A. Beard (New York: 1911); and the second volume by Dr. Delos F. Wilcox's work on *Municipal Franchises*.

Ten Massachusetts cities have asked the legislature for new charters at its present session. From some of the cities have come alternative plans; but in every case the proposed changes are in the direction of simplifying the present administrative machinery. In addition a general permissive charter has been put forward with the request that the legislature permit its adoption by such cities as may desire.

The Supreme Court of Michigan in a recent decision involving the validity of the Detroit referendum amendment to municipalize the street railways, has held that, under the Home Rule Act of 1909, a city is not permitted to amend its charter piecemeal. This decision

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comes as a great disappointment to the progressives of Detroit not only because of its effect upon the pending amendment to facilitate municipal ownership of street railways, but also because it practically nullifies the civil service amendment to the city charter which was passed by a popular referendum last year and under which a commission had already been appointed and organized. A proposal is pending in the present session of the state legislature making possible charter amendment section by section.

A commission in Grand Rapids, Michigan, is at work on a new charter under the Michigan Home Rule Act of 1909. A recent vote on a bond issue to increase the playground space of the city, resulted in favor of the project, and parcels of land are now being purchased for that purpose.

A bill recently introduced in the Ohio Legislature provides that the mayors of cities shall have power to appoint and remove the director of public safety, the director of public service, the auditor, the treasurer, the solicitor, and the heads of the sub-departments of public service and public safety. This considerably extends the mayor's power of appointment and is further significant in that it makes appointive such officers as the auditor and the treasurer.

The city of Columbus maintains a public recreation department with a salaried director. At the same time that this department was established (July, 1910) a commission was created to supervise recreation activities and report plans for the future. With the permission of the Board of Education the commission has maintained four recreation centers in public school buildings and the city has assigned the third floor of the city hall as a civic center. In addition market halls in other sections of the city were utilized for similar purposes. The average weekly attendance at all these centers is between four and five thousand. The activities of the recreation department include, besides one hundred popular free lectures, branch libraries throughout the city, a children's theater, various clubs, regular gymnasium training, etc. In connection with the Plant, Fruit and Flower Guild, the department will conduct during this summer vacation, school gardens in vacant lots. The interest of the city in this work is evidenced by the fact that the council has voted $6,000 for its support during the next six months, and has recently issued $20,000 in bonds

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for the purchase and equipment of playgrounds. On April 18 an election will be held to determine whether or not a park commission with extensive powers shall be established. Such a commission would probably take over all the work of the department of public recreation.

The city of Columbus has recently enacted a most carefully drawn and up-to-date housing code. It is based upon Veiller's "Model Tenement House Law" with certain improvements which its sponsors believe make it the most adequate and satisfactory law on the subject in any city of the country. Perhaps the most notable feature of the code is that it secures to tenants in dwelling houses the same protection given those in tenements. Only a brief summary of its provisions is possible. Under the heading "light and ventilation" there are provisions regulating the area of the lot which a tenement may occupy—75 percent of a corner lot and 50 percent of an interior lot; provisions regulating height, also clauses providing for an adequate depth of yards and unobstructed openings to the sky, defining the window space, fixing the number of square feet of floor space per room at a minimum of 100, with one room in the apartment at 150 square feet, requiring halls to be sufficiently lighted and ventilated, and providing that alterations in existing buildings shall conform for the most part to the requirements for new buildings. Under sanitation of new houses, the code forbids the use of cellars for living purposes, and permits no tenements to be erected on streets without water and sewer connections. Certain improvements are required in existing houses, as that woodwork enclosing sinks and water closets shall be removed. Under the head of maintenance it is required that public halls which are dark in the daytime shall be artificially lighted; that roofs must be kept in repair; that there shall be a water supply on each floor occupied by a family; that buildings and yards shall be kept clean; that there shall be 400 cubic feet of air per room for each adult and 200 cubic feet for each child; that a tenement house occupied by more than six families must have a janitor or caretaker; and that the Health Department may cause to be vacated any tenement house unfit for occupancy. Concerning fire protection, in the case of new buildings, it is required that all tenement houses of over three stories in height shall be fire-proof and that every tenement, having two or more families above the ground floor, must have two separate flights of stairs. Finally, the code requires that the owner or agent of tenement houses and dwellings or proposed buildings of like nature

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must submit the plans and specifications for the proposed houses or alterations of houses for the approval of the Building Department. The names of owners of dwellings and tenements or agents upon whom notice may be served are required to be registered with the authorities. [1]

By an amendment to section 3650 of the General Code relating to the power of municipalities to abate nuisances, the present Ohio Legislature has made it possible for cities to deal effectively with the smoke nuisance. The amendment, which was drafted by the Cleveland Chamber of Commerce, confers powers as follows:—"to regulate and prevent the emission of dense smoke; to declare the same a nuisance, and to prescribe and enforce regulations for the prevention thereof; to prevent injury and annoyance from the same; to regulate and prohibit the use of steam whistles and to provide for the regulation of the installation and inspection of steam boilers and boiler plants."

The Cleveland Municipal Association, acting on the request of the National Short Ballot Organization, has initiated a campaign for the short ballot in Ohio. From this time until the meeting of the Ohio constitutional convention, the short ballot idea will be strongly urged upon the people of the state.

The Minneapolis City Council has recently passed an ordinance to compel more adequate street car service. The street car company is required to run sufficient cars between the hours of 5 and 8.30 a. m., 11.30 a. m. and 2 p. m., and 4.30 and 6 p. m., so that no car shall carry a greater number of passengers than its seating capacity and one half as many more. But a car, though filled according to the terms of the ordinance, must stop for additional passengers unless there is another car following within two hundred feet.

The new charter of the city of St. Louis, the result of long deliberation by the Board of Freeholders, was defeated at the special election of January 31, by a vote of 65,046 to 24,891. Its notable provisions may be summarized as follows:

The legislative department consists of a council of fifteen members elected for four years, seven at a time, and a president of the council,

[1] Communicated by Professor W. J. Shepard of Ohio State University.

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elected by popular vote, who is, in addition to his legislative duties, a vice-mayor. Among the powers of the Council may be noted that to "acquire, lease, and operate public utilities" and by a two-thirds vote to establish new offices and fix the compensation thereof, the incumbents of which offices are to be appointed by the appropriate heads of departments or the mayor. The Mayor holds office for four years unless removed by the Council for cause. In him is vested the appointment of all city officials, not elected by the people or otherwise provided for. He is given a general supervision over all city departments and may require reports and initiate investigations, and is a member, together with the Comptroller and the President of the Council, of the Budget and Sinking Fund Commission. The Comptroller, an elected officer, is subject to suspension by the Mayor and removal by the Council. He is entitled to a seat in the Council, and the privilege of debate on all matters connected with his department, but may not vote. The President of the Board of Assessors is an elected officer who appoints the district assessors of the city. The Board of Equalization is composed of the President of the Board of Assessors and four real estate men of the city of ten years' experience and appointed by the judge of the circuit court of the eighth judicial district. An unusual city official is the Collector, elected by popular vote, who collects all city, state, and school taxes, special assessments, etc., paying the same over to the Treasurer. Five members compose the Board of Public Improvements, appointed by the Mayor, three of whom must have had technical training and experience and each of whom must receive at least $8,000. The department heads are appointed by the Board. Another appointed official is the Health Commissioner, with the Board of Health, a useless body, designed to act as a court of appeal from the decisions of the Commissioner. The Civil Service Commission is made up of three members, two appointed by the Mayor, and one by the Board of Public Improvements to serve at its pleasure, a division of appointive responsibility for which there is no good reason. Another provision for which no good reason is apparent is that one of the Mayor's appointees to the Civil Service Commission must be from the political party casting the largest vote at the last preceding national election to which the other appointee of the mayor does not belong. The minimum salary for civil service commissioners, $1,200, seems insufficient. The further provision that the members of the Commission appointed by the Mayor may be removed by a majority of the members-elect of the City Council has

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too much the appearance of a design to make the Commission the tool of the Council. Furthermore, the appointment and removal of the Commission seems unnecessarily divided among the Mayor, Council, and Board of Public Improvements. In granting franchises, the Council may not proceed without hearing the recommendations of the Board of Public Improvements. The Council may, by ordinance, provide for a popular referendum on franchises, or, on a petition of fifteen percent of the voters, submit the franchise to them at the polls. The referendum is applied in the case of bond issues, when the assent of two thirds of the voters at a special election is required. The administration of the sinking fund and the annual presentation of the budget are functions committed to the Budget and Sinking Fund Commission, above mentioned. Together with its report, this commission submits to the Council a bill containing the appropriations for each department and fixing the tax rate. The last provision to be noted is a rather lame provision for the recall. A petition of twenty-five percent of the registered voters may be presented within ten days before the November election, asking for the recall of a particular officer and stating reasons. Upon the reception of this petition, the Board of Elections incorporates in the ballot this question, "shall there be an election for (stating title of office) to succeed (name of incumbent) at the next municipal election?" If the majority of the voters vote affirmatively, the official concerned is considered as removed from the date when his successor shall have been elected at the ensuing spring elections.

The chief reasons assigned for the failure of the charter are the bunglesome method of constituting the Civil Service Commission; the lack of provisions for initiative and referendum, and the ineffective recall; the fact that the Council is not made a participator in the appointing power; and the attempt of the Board of Freeholders to rush the charter to a vote without allowing time for due consideration.

The voters of St. Louis must be commended for refusing to approve this charter. The adoption of the charter would not have been indicative of progress in that city along the lines of better city government. In many of its provisions it clings to antiquated traditions, while the more progressive sections are badly drawn. It is distinctly contrary to recent tendencies toward greater simplicity of governmental machinery and the reduction of the number of elective offices.[2]

[2]Communicated by F. W. Dickey, of Western Reserve University.

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The system of preferential voting received a fair trial at the first election held under the new charter in the city of Spokane, Washington, on March 7. The charter permits candidates to be placed in nomination by the signatures of any twenty-five qualified voters, and for the five commissionerships there were at the recent elections 92 candidates. The population of the city is slightly more than one hundred thousand, and the number of ballots cast was 22,058. From all accounts the working of the system of preferential voting was accompanied by no unusual difficulty.

The recent election in Seattle, Washington, afforded an interesting illustration of the recall procedure. About a year ago Hiram C. Gill, a typical politician of the old stripe, was elected mayor of the city on a liberal platform. Immediately after the election, he appointed a chief of police whose lax administration of the laws led to a great deal of dissatisfaction among good citizens. The result was an investigation by the city council which disclosed the existence of considerable corruption. The Seattle city charter contained provision for recalling the mayor, but this procedure required that the recall petition should be signed by at least twenty-five percent of the voters of the city. That necessitated the filing of a petition bearing at least 11,000 names. A Public Welfare League was organized, circulated recall petitions, secured the necessary number of signatures, and announced Mr. G. W. Dilling, a prominent Seattle business man, as its candidate to supersede Mayor Gill. A very bitter election campaign ensued; the registration of voters reached the unprecedented figure of 72,000; and at the election on February 7, more than 62,000 votes were cast, of which about one quarter were polled by women. Mayor Gill retained his hold on the four down-town wards, but Mr. Dilling carried all the residential wards of the city except one, and lost that by a few votes. His plurality in the whole city was over 6,300.

Mrs. Russell Sage has given $10,000 to the firemen of New York City, to be used for permanent technical libraries in the fire stations. Each library will contain about fifty volumes dealing with the subjects covered by the civil service examinations.

A conference of New York mayors will be held at Poughkeepsie, New York, on May 25 and 26, and it is expected that the gathering will be even larger than that held at Schenectady a year ago. The sub-

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jects to be considered are government by commission, methods of taxation and assessment, and the administration of public works departments.

Seven new charters have gone into effect as a result of action by the present California legislature. These charters were in each case prepared by boards of fifteen freeholders and adopted by a majority vote of the people of the city before submission to the legislature. Numerous changes, the work of freeholder boards or of city councils, similarly approved by the people, have been made in existing charters. Many of the features incorporated in the new and amended charters are not of general concern. There are, however, observable certain tendencies which are very interesting and one or two original departures in charter fashions.

The first noteworthy tendency is toward the commission form of government. At the head of the list is Oakland with a population of 230,000, the largest city to adopt the commission plan in its entirety. Modesto, Vallejo, Pomona, San Luis Obispo, Monterey, and Santa Cruz, all small places, have taken up the new system largely under the inspiration of the success achieved by Berkeley. Sacramento, the state capital, is on the eve of electing a board of freeholders to formally propose a commission charter already drafted.

The second tendency is toward adoption of the initiative, referendum, and recall. Los Angeles has had these devices since 1903, Berkeley, San Diego, and several smaller places adopted them somewhat later. The chief accession to their ranks this year is San Francisco, which now combines all that is absurd and bad in the organization of the city government with these most progressive methods of securing the popular will.

The third tendency is toward non-partisan nominations and elections. The following cities provide for nomination on petition of twenty-five qualified electors each signing a verified individual certificate; San Luis Obispo, Monterey, Modesto, Santa Cruz, and Vallejo. In Oakland fifty such certificates are required. In San Francisco it is necessary for not less than ten or more than twenty "sponsors" to appear before the registrar and certify to the qualifications of the candidate under oath. In all these cities the appearance of any party designation is prohibited. In San Luis Obiso, and Monterey, one election settles it. In the rest there are two elections. Oakland follows Des Moines in making the first election a simple primary to

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reduce the number of candidates to two for each position. The other cities follow Berkeley and Dallas in providing that any candidate receiving a clear majority at the first elections is thereby elected.

The following peculiarities in two of the commission charters are worthy of notice. Modesto provides that where a recall petition is filed an election shall be held at which the question is submitted "Shall——— (naming the officer) be recalled"? If a majority of votes are cast in the affirmative a successor is nominated and elected as in the case of ordinary elections. Below appear the names of the candidates to succeed the person recalled if he is removed from office by a majority of those voting on the recall question. This charter presents two other important features of difference from the typical commission charter. In the first place its authors adopted the Dallas system of designating the commissionerships by number for election purposes only. Their motive in so doing was to avoid a somewhat imaginary danger of "plumping" or "bulleting."

The second peculiarity of the Oakland charter is the character of the safeguards against inconsiderate signing which it throws about petitions for the initiative, referendum, and recall. They are designed to make it impossible for a man to sign such a petition in ignorance of its real purport. Below appears the form of individual certificate which must be signed and sworn to by each petitioner for the recall. The forms for the initiative and referendum are similar.

Further protection against ill considered action is ensured by the somewhat common expedient of printing on the ballot reasons for and against the removal of the incumbent in not more than two hundred words. Before the submission of ordinances by initiative or referendum the popular proponents or opponents on the one side and the council on the other may submit arguments up to two thousand words, which must be sent to the voters with the sample ballots before election.[3]

[3]Communicated by Mr. Thomas H. Reed, Secretary to the Governor, Sacramento, Cal.

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NEWS AND NOTES.

EDITED BY W. F. DODD.

The eighth Annual Meeting of the American Political Science Association will be held in Buffalo, New York, the last week in December of this year. It is probable, however, that the sessions of the last day will be held in Toronto, Ontario. Professors Albert Bushnell Hart of Harvard University, and A. R. Hatton of Western Reserve University have charge of the preparation of the programme of speakers and papers.

The fifth annual meeting of the American Society of International Law was held at Washington, D. C., April 27–29, the chief topic of discussion being the status of resident aliens in international law.

In the February number of this REVIEW reference was made to the fact that Professor R. B. Scott of the University of Wisconsin had resigned to enter upon the practice of law. We may now add that Mr. Scott has become the General Attorney of the Chicago, Burlington & Quincy Railroad Co., and will devote his attention more particularly to commerce matters, both state and interstate.

On January 11, 1911, Professor Otto Gierke, professor of civil and public law at the University of Berlin, celebrated his seventieth birthday, and in commemoration of this event his friends and students published a *Festschrift*, the contributions to which relate principally to private law and legal history.

Governor Simeon E. Baldwin will deliver this year the Dodge lectures on Responsibilities of Citizenship, at Yale University.

Dr. Charles H. McIlwain, now Thomas Brackett Reed professor of history and political science at Bowdoin College, has been elected to an assistant professorship of history at Harvard University.

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Mr. Middleton G. Beaman has resigned as law librarian of Congress and of the Supreme Court, and has accepted a position with the Legislation Drafting Association of New York City. Mr. Beaman is succeeded at the Library of Congress by Mr. Edwin M. Borchardt, who has for several years been connected with the law division of the library, and who will devote his efforts more particularly to the development of the foreign law collection of the Library of Congress.

Professor Thomas H. Reed of the University of California has resigned to become the private secretary of Governor Johnson.

Mr. Herman G. James, now a fellow in Columbia University, will conduct a course this summer in the seminar of Professor Karl Lamprecht at the University of Leipzig, taking as his subject the relation of the states to the federal government from the formation of the American Union until the period of the civil war.

On February 16, 1911, Francis Newton Thorpe, Ph.D., LL.D., Professor of Political Science and Constitutional Law of the University of Pittsburgh, on invitation of the Rector and Faculties of the University of Geneva, delivered a lecture in the Aula of the University on "Democracy in America." This lecture marks the establishing of the entente cordiale between the University of Pittsburgh and the University of Geneva. Professor Thorpe and his family are spending the year in Europe.

Augusto Pierantoni, professor of international law at the University of Rome, died recently. Professor Pierantoni was probably the the leading Italian scholar in the field of international law.

Leon Aucoc, the distinguished authority on French administrative law, died on December 15, 1910. Aucoc is best known by his *Conférences sur l'administration et le droit administratif.*

Professor Georg Jellinek of the University of Heidelberg died on January 13. Professor Jellinek has for years been one of the most distinguished scholars of the world, and is well known for his *Unrecht und Strafe* (2d ed. 1908), *Gesetz und Verordnung*, (1887), *and Das Recht des Modernen Staates*, vol. I (2d ed., 1905). The latter work, which has been left incomplete by the author's death, is his greatest contri-

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bution to the scientific literature of his subject. In Professor Jellinek's death the political science world has sustained a great loss.

The American Philosophical Society has announced that the Henry M. Phillips Prize for the year of 1911 will be awarded for the best essay submitted prior to the first day of January, 1912, upon the subject "The Treaty-Making Power of the United States; The Methods of Its Enforcement as Affecting the Police Powers of the States." The prize will be two thousand dollars. The essay must contain not more than one hundred thousand words and may be written in English, French, German, Dutch, Italian, Spanish or Latin, but, if in any other language than English, the essay must be accompanied by an English translation. The essays are to be sent to the President of the Society at Philadelphia.

Professor Josef Redlich of the University of Vienna will visit America in 1912, and will deliver at the Johns Hopkins University a course of lectures dealing with the political and constitutional problems of Austria-Hungary.

The Albert Shaw lectures on Diplomatic History at the Johns Hopkins University will be given this spring by Dr. C. O. Paullin of Washington, D. C., his topic being "The Diplomatic Activities of the American Navy in the Far East."

The lectures this year upon the James Schouler foundation of the Johns Hopkins University were given by Professor J. B. Moore, his subject being "Four Stages of American Development,—Federalism, Democracy, Imperialism, Expansion."

A lectureship on the history and institutions of the United States has been established at Oxford University, and it is expected that the first series of lectures on this foundation will be given in 1911. The lectureship is to be filled annually by some American scholar, and the lectures will relate to political, institutional, economic, or social history and conditions in the United States. The appointment of the lecturer is entrusted to a board of nine members, including the vice-chancellor of the University, the regius professor of modern history, and the American ambassador to England. This board has appointed an advisory committee composed of Presidents Lowell, Hadley and Butler, Dr. Woodrow Wilson, and Mr. James Bryce.

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On March 29 the New York State Library was destroyed by fire. A few thousand books and perhaps one-tenth of the manuscript collection were saved, both much injured by fire and water. The legislative reference section and its incomparable collections, the work of twenty years, were completely destroyed. These included a consolidation on cards of the annual Indexes to legislation from 1891 to 1908 inclusive; the manuscript for 1909 and 1910 was ready for the printer; and the 1911 Index had been started. In taking up the work again it has seemed best to begin with the Index for 1911, with the hope that the years 1909 and 1910 may be completed at some time in the future, and that the consolidated Index may be reconstructed from the printed copies of the Bulletins. Active work on the biennial Review of Legislation and other legislation bulletins will have to be discontinued for the present, but there is no intention of definitely abandoning the series.

The Bulletin of the Virginia State Library for October, 1910, contains a valuable bibliography of the Conventions and Constitutions of Virginia including references to Essays, Letters, and Speeches in the Virginia newspapers. The compiler is Mr. Earl G. Swem, Assistant Librarian.

Mr. Frederick V. Holman, President of the Oregon Bar Association, has reprinted in pamphlet form his address at Portland before that association entitled *Some Instances of Unsatisfactory Results under the Initiative Amendments of the Oregon Constitution* (Portland, 1910, pp. 46.)

The first number of the *Town Planning Review* appeared in April, 1910. This journal is a quarterly, and is issued by the University of Liverpool. The editor is Mr. Stanley D. Adshead, professor of town planning and civic art in the school of architecture at the University of Liverpool.

The American Association for Labor Legislation began in January the publication of the *American Labor Legislation Review,* which will be issued quarterly, and will serve as the organ of the Association. The first number contains the proceedings of the fourth annual meeting of the Association, at St. Louis, December 28 and 29, 1910; a full report of the work of the preceding year; and an important memorial on occupational diseases.

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With its February, 1911, number, which completes volume XIX, the *Yale Review* will cease as a journal devoted to economic and political questions, but will continue under new editors as a general review. This action is taken because of the establishment of the *American Economic Review*, which covers practically the field which has heretofore been covered by the *Yale Review*. During the nineteen years of its existence as a scientific review, this journal has maintained a high scientific character, and has occupied a useful and important place in the discussion of historical, economic, and political questions.

The first number of the *American Economic Review* appeared in March. This *Review* will appear quarterly and is the official organ of the American Economic Association; it replaces the *Economic Bulletin*, which was published during the years 1908, 1909, and 1910. Prof. Davis R. Dewey of the Massachusetts Institute of Technology, is the managing editor of the *Review*, and is assisted by a board of editors, of which Prof. J. H. Hollander is chairman. Unlike the *Economic Bulletin*, which it supersedes, the *Review* will contain articles, and the first number sets a high standard for contributions of this character; but if we may judge by the present number, the emphasis of the new journal will be placed upon book reviews, book notes and notes of current interest to the economic world. Of the 219 pages which comprise the first number, 76 are devoted to articles, and the remainder primarily to information of a bibliographical character. The book reviews, notes of books, documents and reports, and of periodical literature are extremely well planned and well arranged. These departments will make the *Review* an invaluable aid to those interested in the current literature dealing with economic questions. It may be well to suggest, however, that the title-page of the *Review* does not furnish an adequate guide to the contents of the section devoted to "Reviews and Titles of New Books." The annual list of doctoral dissertations in political economy appears in this first number of the *Review*.

The Oxford University Press announces that Mr. H. E. Egerton has in preparation a work on "Federations and Unions within the British Empire."

P. S. King and Son of London announce the publication of an English translation of Dr. Hans Wehberg's *Beuterrecht im Land-und*

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Seekriege (see this REVIEW, vol. IV, p. 411.) The English version is entitled *Capture in War on Land and Sea.*

History, as it approaches the present time, becomes of increasing interest to the political scientist. The last volume of the Cambridge Modern History, entitled *The Latest Age* (The Macmillan Co. 1910, pp. 1033) is therefore of especial value to students of constitutional law and international relations. Among others there are chapters on the Foreign Relations of the United States during the Civil War, the German Empire, the Reform Movement in Russia, the British Empire in India, the Far East, The Regeneration of Japan, the Russo-Japanese War, the European Colonies, the Modern Law of Nations, and the Prevention of War.

Those interested in labor legislation and constitutional law will find in the November, 1910, number of the *Bulletin of the* (United States) *Bureau of Labor* a valuable article by Mr. Lindley D. Clark on "Labor Laws declared Unconstitutional."

Through Five Administrations (New York, Harper, 1910, pp. 280), is a volume of reminiscences of Colonel William H. Crook, body-guard to President Lincoln and an attaché of the White House for many years. The reminiscences were compiled and edited by Margarita Spalding Gerry. In a book of this character one must not, of course, look for new contributions to political history, but Colonel Crook's reminiscences of presidential life from 1864 to 1885 are interesting, and now and then his statements are important, as in the case where from almost daily personal association with President Johnson he emphatically denies the stories of Johnson's excessive drinking.

Industrial Accidents and Their Compensation, by Gilbert Lewis Campbell, B. S. (Boston, Houghton, Mifflin, 1911, pp. xii, 105), is the seventh and latest issue of the Hart, Schaffner, and Marx Prize Essays. The work purports to be only a general essay. As such, however, it presents in brief compass an excellent general survey of the problem as it presents itself in the United States today, and the efforts which are being made for its solution.

In earlier numbers of this REVIEW reference has been made to the monographs issued by the National Monetary Commission. One

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of the most recent of these monographs is that by Professor George E. Barnett on *State Banks and Trust Companies since the passage of the National Bank Act.* (Washington, Government Printing Office, 1911. Pp. 366). Professor Barnett's study, although in large part devoted to the technical aspects of the state banking systems, has chapters on the incorporation and supervision of state banks, and constitutes a valuable addition to the literature dealing with the activities of state governments.

The New York State Library has published a bulletin on *American Ballot Laws* 1888–1910, by Arthur C. Ludington (pp. 220). This deals with the ballot as provided for in general laws applying to regular elections of public officers, excluding ballot requirements in primary election laws and for special elections. Part I gives a brief chronological survey of laws and constitutional amendments for each state and territory for the period from 1888–91 to 1910 inclusive. Part II presents in tabular form the principal changes in the several states. Part III digests the principal features of the ballot laws of each state, on November 8, 1910. Part IV is a bibliography of books, pamphlets, and magazine articles on the ballot laws in this country since 1888.

The Illinois Special Tax Commission has published two important volumes in connection with its report: *Compilation of Tax Laws and Judicial Decisions of the State of Illinois,* by Albert M. Kales and Elmer N. Liessmann (pp. 273); and *A Report on the Taxation and Revenue System of Illinois,* by John A. Fairlie, Chief Clerk of the Commission (pp. xv, 255). Professor Fairlie's report is the result of a study of the laws and the data in the published reports of various state officials. Statistical tables showing assessments, percentages paid, and other information are presented. A brief comparison is also made of methods of taxation in other states and countries, while in the last two chapters state taxation officials and the taxation of corporations in the United States are discussed.

A bulletin has recently been issued by the Wisconsin Legislative Reference Department on *Corrupt Practices at Elections.* (Madison, Wis., pp. 86). This bulletin was prepared by Mr. S. Gale Lowrie, and contains a complete digest of the laws of England, of the United States and of the several states with respect to corrupt practices.

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The *Journal of the Society of Comparative Legislation* for November, 1910, (Vol. XI, part 1), contains, among others, valuable articles on the North Atlantic Coast Fisheries Arbitration; the modern conception of civil responsibility; employers, employees, and accidents; nationality and naturalization in Latin America; and on Savigny and Lord Stowell.

Les grands traités politique, by Pierre Albin (Paris, Alcan) is a collection of the principal treaties made since 1815, but the texts included relate mainly to political and territorial readjustments on the European continent. The volume is well indexed, and makes a convenient book of reference.

Les régies municipales, by Émile Bouvier (Paris, Doin), presents a concise description of the municipalization of public services in France and other countries. M. Bouvier is an advocate of "municipal trading," but his theoretical views do not color to any great extent the descriptive part of his work.

Commento allo statuto del Regno (Turin, 1909, 3 vols.) is an extended commentary on the Italian constitution by F. Racioppi and I. Brunelli. The first volume of the original undertaking was by Professor Racioppi and appeared in 1901. Upon Racioppi's death in 1905 Brunelli assumed the task of completing the work, largely from manuscript material left by the author. The three volumes constitute a commentary, article by article, upon the *Statuto*, with numerous and extended digressions into the fields of political philosophy and comparative constitutional law. These digressions break the continuity of the work, and impair its usefulness as a treatise on Italian constitutional law.

A new (fourth) edition has been issued of A. T. Carter's *History of English Legal Institutions* (London: Butterworth, 1910, pp. vi, 304). This book, as users of earlier editions know, does not purport to be a history of English law, but confines itself mainly to an historical account of the English judicial system, thus covering very much the field which is now more exhaustively treated in the first volume of Holdsworth's *History of English Law*. But Carter's book has not been superseded and is still the best brief account of the development of the English courts.

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Les Speakers; étude de la fonction présidentielle en Angleterre et aux Étatus-Unis, is a recent doctoral dissertation by Dr. Georges Mer of the University of Dijon (Paris, Larose et Tenin, 1910, pp. 183). M. Mer traces the development of the speakership as an institution, contrasting the impartial position of the speaker in the English system with his position as a political leader in the United States.

Reference was made in an earlier number of this REVIEW to the appearance of the first report of the New York Commission on Employers' Liability. More recently reports have been issued by the Illinois Employers' Liability Commission (pp. 249), by a similar commission in the state of Washington (pp. 48), and by the Wisconsin Special Committee on Industrial Insurance (pp. 98). These reports contain much valuable matter, although the members of the Illinois commission were unfortunately not able to agree upon any definite proposals. The report of the New York commission is the most valuable official document which has yet been issued upon this subject, and challenges comparison with the best reports of English Royal Commissions. In addition to the commissions of Illinois, Wisconsin, Washington and New York, similar bodies have been at work in Massachusetts, Minnesota, Montana, New Jersey, Ohio, and Connecticut, and a federal commission was appointed last year. Representatives of these commissions met in Chicago on November 10–12, 1910, with a committee representing the Commissioners on Uniform State Laws, in an effort to reach an agreement upon a uniform workmen's compensation act, and a preliminary draft of a law was agreed upon by a committee appointed by this conference. The volume of proceedings of this conference on Compensation for Industrial Accidents will be of great value to persons interested in the question. (Boston, published by Amos T. Saunders, Secretary. 1910. pp. 362.) The tenth biennial report of the Bureau of Labor of West Virginia (Charleston, 1910, pp. 297) devotes especial attention to employers' liability, and reprints the laws of the several states dealing with this subject. In this connection attention should also be called to the fact that the twenty-fourth annual report of the United States Bureau of Labor will be devoted to workmen's insurance and compensation systems in Europe, and will present the text of the laws of the several European countries together with accounts of their operation.

Volume IV of the *Zeitschift für Völkerrecht und Bundesstaatsrecht* (Kern's Verlag, Breslau, 1910) contains more than 800 pages of articles,

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notes, judicial decisions, acts of international conferences, chroniques and book reviews. Among the more important contributions may be mentioned the article by Dr. Carl Falck of Berlin relating to the German Imperial law of 1872 concerning the order of Jesuits, two articles by Prof. Meili of Zurich dealing with some questions of private international law; two articles by Prof. Josef Kohler of Berlin on the peace movement and international law, and aerial navigation in international law; an article by Dr. Adolf Arndt on international law and the navigation of the Rhine and Elbe rivers; an article by Prof. Paul Laband entitled Rechtsgutachten in der Hellfeldsache; one by Dean Charles Noble Gregory on the Contributions of American judges to international law; and one by Courtney Kenny on the law of the air. There is also an appendix containing an article by Hansemann Fritz dealing with the theory of continuous voyages in respect to blockade and contraband in the light of the act of the London Naval Conference, and one by Arthur Meynen on the constitutional position of the Prussian Minister of War.

The second edition of Black's *Law Dictionary*, which has appeared from the press of the West Publishing Co. (St. Paul, Minn., pp. 1314) though not substantially greater in bulk than the first edition, is, in some important respects, a new work, and is well worthy of being pronounced the best American single volume dictionary of the law. The treatment of each title being in the great majority of cases brief, opportunity is given for the legal definition of a very great number of terms. Two principles of treatment followed by the author are especially to be commended. These are the grouping of all compound descriptive and derivative terms under a single fundamental heading or title, and the statement in the author's language of accurate definitions, supported by reference to authorities, rather than the stringing along of a variety of quoted definitions, differing more or less from one another. The paper and type arrangement are excellent.

Mr. Jerome Internoscia of Montreal, Canada, has prepared a work entitled *New Code of International Law* (The International Code Co., New York, 1910) in 1003 large quarto pages, in which, in parallel columns in English, French and Italian texts, the attempt is made to set out in 5657 paragraphs an entire code of international law. Though the title does not so indicate, the leading rules of private international law are also included. This work is a very great one for a single indi-

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vidual to undertake, and scholars cannot but praise the author's industry and zeal. It is not possible in this place to estimate the judgment and learning with which the task has been performed. It may be observed, however, that aside from the inclusion and intermixture of public and private international rules, which is to be regretted, the author has sought to prepare a code of ideal international law along pacifistic lines, as contrasted with a statement of international legal principles as they actually exist at the present time, and has made no attempt to indicate those provisions which may fairly be said to be already established law, and those which are merely desirable, nor has he in any instance quoted an authority for the propositions stated. For these reasons, the work, while it may prove suggestive to future codifiers of international law, cannot be of such direct assistance to them as it might have been had the authorities for each statement been marshalled, and the ideal distinguished from the actual.

In a volume entitled *China and the Far East* (New York: Crowell & Co. xxii, 455) is contained a collection of papers read at a meeting at Clark University for the discussion of Far Eastern affairs. Among the participants are authorities like Mr. Chester Holcomb, Mr. H. B. Morse, and Dr. Asakawa. The collection comprises twenty-two articles reviewing almost every phase of China's social, economic and political life, with a few papers dealing with Japan and Korea. The volume is edited by Professor George J. Blakeslee.

In Professor James Mark Baldwin's new book *The Individual and Society* (Boston: Richard G. Badger, 1911, pp. 211) are briefly summarized and restated in more popular form the author's well known psycho-sociological theories as they are to be found stated in his larger and more erudite treatises. The book is based upon a course of lectures delivered in the National University of Mexico upon the occasion of the inauguration of systematic work at that institution.

Professor Simon N. Patten has contributed a new volume entitled *The Social Basis of Religion* (The Macmillan Co., 1911, pp. 247) to the American Social Progress Series. Dr. Patten declares himself to be an economist on the road to philosophy, and in this new book attempts a constructive defense of religion, identifying religion with the social reaction against degeneration and vice. The work concludes with chapters on the "Social Mission of the Church," and the "Socialization of Religious Thought."

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The fisheries of New England have played an important part in the political as well as the economic history of the United States. In 1853 there was published by the Government the Sabine report on the principal fisheries of the American Seas, and in 1880 the voluminous seven volume report on The Fisheries and Fishery Industries of the United States, prepared by G. Brown Goode with the coöperation of the Commissioner of Fisheries and the Superintendent of the Tenth Census. An adequate literary history of this in all its phases by Prof. Raymond McFarland, of Middlebury College has now appeared as a publication of the University of Pennsylvania (*A History of the New England Fisheries:* D. Appleton & Co., Agents, N. Y., 1911, pp. 457). One chapter is devoted to an excellent résumé of the international questions that have arisen in connection with the subject, and in the appendix is given in full the award of the Court of Arbitration at the Hague of September 7, 1910, adjusting the controversies between the United States and Great Britain with reference to the North Atlantic Fisheries. Besides several maps, the work contains an elaborate annotated bibliography.

A French translation of Professor E. R. A. Seligman's *Incidence of Taxation* has appeared from the press of V. Giard & E. Brière (Théorie dé la Repercussion et de l'Incidence de l'Impot. 1910, pp. 544). The translator is Dr. Louis Suret, and the work is included in the Bibliotheque Internationale de Science et de Legislation Financiéres.

In *The Nation as a Business Firm: An Attempt to Cut a Path Through Jungle,* (London; Adam and Charles Black, 1910, pp. xi, 268), Mr. W. H. Malloch, the English economist and essayist, makes another attempt to throw light upon the always-interesting question of the distribution of wealth or rather of income. The purpose of his study, he states, is to correct the wild statements that have been made by certain social reformers regarding the tendency toward the concentration of wealth into fewer hands. His studies lead him to the opposite conclusion. The facts may be as stated by him, but a reading of the work can hardly fail to lead to the conclusion that the author has not proven his case. The book bristles with figures and statistical tables. The impression given is that they were carefully selected and presented with a view to proving a previously-conceived position. Essentially the manner of treatment is controversial and argumentative. In no sense is it a closely-reasoned and judicial study of the

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question such as one would like to have from a trained statistician. "Interesting but not convincing" best characterizes the work.

Het stellig Volkenrecht (The Hague, Nijhoff, 1910, 2 vols.) is a comprehensive treatise on international law by Professor J. de Louter of the University of Utrecht. This work is attracting a good deal of attention abroad, and has been spoken of as one of the best of recent treatises. Unfortunately the language in which it is written restricts its usefulness. Professor de Louter rejects absolutely the notion of international servitudes, a notion which it may be remembered formed an important part of the American case in the recent North Atlantic Fisheries arbitration.

The *Records of the Federal Convention of 1787*, edited by Professor Max Farrand, has been issued from the Yale University Press.

Among the new books recently issued or announced for issue this spring are: *The Origin and Growth of the American Constitution*, by Hannis Taylor (Houghton, Mifflin); *Reminiscences of the Geneva Tribunal of Arbitration, 1872*, by Frank W. Hackett (Houghton, Mifflin); *The Income Tax*, by E. R. A. Seligman (Macmillan); *Commission Government in American Cities*, by Ernest S. Bradford (Macmillan); *Republican Traditions in Europe*, by Herbert A. L. Fisher (Putnam); *History of the Organization and Development of the British Post Office*, by J. C. Hemmeon (Houghton, Mifflin); *War or Peace*, by Gen. Hiram M. Chittenden (McClurg); *Legal Doctrine and Social Progress*, by Frank Parsons (Huebsch); *History of Parliamentary Taxation in England*, by S. A. Morgan, (Moffat).

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BOOK REVIEWS.

The Diary of James K. Polk during his Presidency, 1845 to 1849. Now first printed from the original manuscript in the collections of the Chicago Historical Society. Edited and annotated by MILO MILTON QUAIFE, Assistant Professor in the Lewis Institute of Technology, with an introduction by ANDREW CUNNINGHAM MCLAUGHLIN, Head of the Department of History of the University of Chicago. (Chicago: A. C. McClurg and Company, 1910. 4 vols. Pp. xxxii, 498; 494; 508; 462.)

The publication of the Diary of President Polk may without overstatement be described as an event of extremely great importance in the literature of American history and government. The original manuscript was for some years in the possession of the Chicago Historical Society and a faithful copy of it, prepared under the direction of George Bancroft (who had planned a history of Polk's administration), is in the New York Public Library, Lenox Building. Recently the Congressional Library has acquired the Polk Collection from the Chicago Historical Society. This includes a number of Polk's letters and added to the mass of Polk correspondence already in the Library comprises an unusually complete body of materials.

"Who knows or cares anything about the personality of James K. Polk or Franklin Pierce?" asked Mr. Bryce (Am. Commonwealth, I, 78). "The only thing remarkable about them is that being so commonplace they should have climbed so high." This is the modern equivalent of the Whig campaign cry, "Who is Polk?" Assuredly Polk was not wholly commonplace. Even Von Holst admitted that. The Presidency is largely what the President makes it. Polk showed what a determined, industrious, withal partisan President might do when not handicapped by an ambition for reëlection. The diary is more than a human document; it is a first-hand account of the Presidency from 1845 to 1849.

The diary begins August 26, 1845 and continues with scarcely a

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break to May 1849, when Polk returned to Tennessee after the expiration of his term. How trustworthy is it, and to what extent may it be depended upon as material for history? The popular verdict has been against Polk and it will be used by some as a series of admissions by the defendant. Its positive trustworthiness may be indicated by answering two questions. Was it composed with an eye to future publication as a personal and political vindication? How far did Polk's personality interfere unconsciously to color his impressions? In answer to the first no one after reading the diary will dispute the conclusion of Professor McLaughlin that it "does not appear to have been written with the expectation that it would be conned by future historians. It lacks, therefore, affected self-consciousness at least" (I, xiii). There is, so far as the reviewer is aware, no external evidence to the contrary and Polk's statement that he kept the diary for the purpose of aiding his own memory is justified by a reading of the several volumes. His expression of this purpose answers in large part the query as to the personal equation. The diary opens with an account of a conversation with Buchanan upon the Oregon question. "This conversation was of so important a character that I deemed it proper on the same evening to reduce the substance of it to writing for the purpose of retaining it more distinctly in my memory. . . . It was this circumstance which first suggested to me the idea, if not the necessity, of keeping a journal or diary of events and transactions which might occur during my presidency" (II,301). The diary is, therefore, remarkably free from subjective impressions; it is a memorandum of each day's events and a digest of conversations. But twice during the four years does it seem to have been "written up" at a later day. Polk constantly referred to it, as John Quincy Adams did his, to the discomfort of less accurate persons, in order to refresh his recollection of interviews, not infrequently of those with the vacillating Buchanan. The diary, then, is systematic, precise, hard, and narrow in scope. It never leaves for long the main business in hand. Its principal digression is the iterated expression of disgust for office-seekers. It gives a final rebuke to the phrase of "Polk the mendacious." Imagination is a necessary ingredient in the character of the preverter of truth. The diary proves by every page that Polk had no imagination. Perhaps it is this utter lack of imagination, this narrowness, which leaves upon the reader the feeling of depression. As a record of conversations one may rely upon the diary, for remembering Polk's purpose in keeping

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it, and his systematic pursuit of his purpose, there was no cause for distortion or suppression. Somewhat otherwise is it as a commentary upon the persons of the time. Polk was an uncompromising Jacksonian democrat. His political opponents were "Federalist" foes, whom he seems to have regarded, Jackson-like, not only as private enemies but almost as public nuisances. Regularity in the Democratic party was necessary to win his favor or to keep it. Of all else he was suspicious, of Barnburners, and of "southern agitators" like Calhoun (IV, 299). Those he trusted most were regular Democrats like himself: J. Y. Mason, Johnson, Bancroft, and Clifford in the Cabinet; Cass, Douglas, Bright, McLane, and Pillow out of it. Of Buchanan Polk gives no favorable impression; although "able" he is in large things constantly playing for popular favor, in small he is "without judgment and sometimes acts like an old maid" (IV, 337). Polk seemed to rely upon his old college-mate, Mason, more than any one else in his Cabinet. He had few personal friends and at times appears pathetic in his loneliness. He was partial to, and tolerant of, those who professed a similar political faith. He distrusted all who opposed him and looked askance at those whom he believed to be sacrificing party principles for personal ambition, like Calhoun, or even Buchanan. Polk's judgments upon the men of his own party, it may be believed, are to be relied upon rather than those upon his opponents. His innate suspicion neutralizes his otherwise favorable predilections for his political friends.

The introduction by Professor McLaughlin is adequate and, of course, interesting. Mr. Quaife has a modest conception of the functions of an editor. One often wishes his notes were fuller and more frequent. The index is highly inadequate. The editor set out to give a faithful reading of the manuscript and this he has done. It is printed in attractive type upon excellent paper—a handsome set of books deserving a place beside John Quincy Adams's diary and Beaton's Thirty Years' View, to both of which it will serve as a corrective.

JESSE S. REEVES.

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The Life of Benjamin Disraeli, Earl of Beaconsfield. By WILLIAM FLAVELLE MONYPENNY. Vol. I, 1804–1837. New York: The Macmillan Company. 1910. Pp. ix, 401.)

Not much of importance is added to our knowledge of English political history through the appearance of the first volume of Mr. Monypenny's life of Disraeli. In this volume the story is carried only to 1837—to the moment when Disraeli, then thirty-three years of age, made his first entry into Parliament. This was in fact a most suitable point to bring the first volume to a close; for it was the culmination of a series of efforts on the part of Disraeli to enter public life which began in 1832, when Disraeli offered himself for election at High Wycombe. During the five years that followed Disraeli appeared as a candidate for Parliamentary honors no less than six times, and it was his seventh attempt that finally resulted successfully in 1837. During the whole of this time, Disraeli can only be described as a political adventurer. Until shortly before his election for Maidstone he had formally allied himself with neither political party. In his earliest political utterances he might sometimes have been mistaken for a radical reformer—almost a revolutionist—and at one time he was somewhat closely associated with Durham, the most prominent Radical in the Grey Whig Cabinet. But for the Whigs, Disraeli never had any love. He saw from the first the impossibility of a rank outsider—a man as remote as possible from the aristocratic landed families who constituted the governing section of the Whig party—ever attaining high political position in a Whig Government; and, while Mr. Monypenny makes out a fair case for the possession by Disraeli of conscientious convictions and real political principles, it is much more evident that his leading motive was ever self-advancement, and a desire for prominence and power.

The Tory party, from the beginning of the nineteenth century, offered a more promising field for talented men not of the aristocracy than did the Whig party. Periodically, after every long term of power, the Tory party uses up its Cabinet material, and is obliged to look around for promising young men to recruit its ranks. Peel was not *persona grata* to the older aristocrats nor even to the petty country squires with whom he was associated in the Tory ranks; but Peel was the salvation of the Tory party after the passage of the Reform Bill, and when Peel disappeared from the scene in 1850, room was made for the new leader who entered Parliament in 1837, but who,

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as early as 1834, had expressed to Lord Melbourne his determination to be Prime Minister.

The greater part of Mr. Monypenny's first volume is taken up with Disraeli's early novels, his travels on the Continent of Europe, and his occasional excursions into politics. It must be acknowledged that in these pages the bombastic, affected, self-glorifying young man becomes a little wearisome. Clever he was beyond any doubt, but there was little in the first thirty-five years of his life to show any real genius. The novels he wrote during this part of his career—Vivian Grey, Contarini Fleming, Coningsby, Henrietta Temple, and Venetia—all contain sparks of genius; but the divine fire is not sufficient to last out to the end of the story. Usually all there is of inspiration in these earlier novels of Disraeli is contained in the first volume, and the other two are in nearly every case best described by Mr. Gladstone's monosyllable, applied to Vivian Grey—"trash." Disraeli's letters to his sister Sarah are probably the frankest self-revelations of his peculiarly unfrank character. Never even to himself was Disraeli completely honest and sincere. Constant affectation and posing had apparently early destroyed his capacity for frankness. To his sister Sarah, however, he showed himself in all his moods of self-glorification and of depression. He was deeply attached to his only sister, and his affection took on a tenderer coloring when his friend and his sister's fiancé, William Meredith, died during a visit to Cairo with Disraeli in 1831. Disraeli's affection for his sister, and his tender consideration for his mother and his deep regard and respect for his father are the most human qualities brought out in his character by Mr. Monypenny's new volume. Without these redeeming traits it would be hard—on the basis of the letters and extracts selected by Mr. Monypenny—to come to any other judgment of Disraeli than that he was a self-seeking, political adventurer, with no enthusiasm for any cause, lacking even in ordinary patriotism, not much to be counted upon by friend or colleague, of whom the best that could be said was that he was undoubtedly brilliantly clever, and that never could he be overlooked or forgotten.

A. G. Porritt.

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Britain Across the Seas—Africa: A History and Description of the British Empire in Africa. By SIR HARRY JOHNSTON, G.C.M.G., K.C.B., D.Sc. (London: National Society's Depository. Pp. xix, 428; 237.)

The most conspicuous characteristic of this volume at first glance, is the wealth of its illustrations; and the more it is examined in detail the more apparent becomes the value which they add to the text. Every phase of the subject is given adequate attention; and the impression thus derived would alone afford a substantial idea of the progress of Africa from savagery to civilization.

The text, divided into sixteen chapters, includes a brief review of the voyages of discovery, the history of the various colonies of South Africa, of the West Coast, of the East Coast and of Egypt. Considerably more than half of the entire space is devoted to the account of the development of British rule at the Cape of Good Hope and in the interior; but, unfortunately, bare reference is made to the recently consummated Union of South Africa, which was scarcely completed when the book came from the press. The chapters allotted to the West Coast, the East Coast and Nigeria, merely summarize the principal events of their respective history, and offer a glimpse of existing conditions. The thirty pages given to the affairs of Egypt, are naturally subject to the same limitations. The treatment is thoroughly popular, although, as might be anticipated from the experience and the authority of the author in this particular field, the lines are broadly drawn, and the general effect is clear and impressive. For those familiar with the subject, little, if any, new or special information is offered. A feature not to be overlooked, however, is the particular description of the aboriginal tribes inhabiting the various portions of the British domain. In a volume so attractive to the general reader, the account of the native peoples as here given in the text and the notes, is worthy of special notice. Throughout, Sir Harry shows his thorough acquaintance with the subject in all its phases, and scarcely ever makes any misstatement of fact. Unfortunately, in the chapter on Nigeria, the name of Sir George Taubman Goldie, the founder of British authority in that region, is several times transposed, so that the uninitiated would have difficulty in his identification; but generally, there is a remarkable absence of errors for a book of this character. Seven good maps and an excellent index complete the working apparatus. In brief, while for the advanced student this latest publication on Africa may

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not be of great value, it is certain that by its attractive form, the interest of the general reading public in the British dependencies in Africa will be naturally enhanced; and to this extent, the distinguished author, Sir Harry Johnston, has once more demonstrated his right to the gratitude of the friends of the Empire.

HENRY C. MORRIS.

Senates and Upper Chambers. By HAROLD W. V. TEMPERLEY. (London: Chapman and Hall, Ltd. Pp. xvii, 343. 1910.)

This is one of the many books and briefer studies called forth by the present strained relations between the Houses of Parliament. Its facts have been brought together in the belief that there is grave danger in tampering with the historic British Constitution, if the experience of other nations with second chambers be neglected or their history misrepresented.

The book consists of five chapters, as follows: I. Introductory. This presents the danger of the present crisis to the English Constitution; the prevailing ignorance as to the practice of foreign and Colonial Upper Chambers; the inapplicability of Federal Upper Chambers for comparison with the English; and the respects in which the author deems the House of Lords unique. II. The Upper Chambers of English-Speaking Lands; their Analogies and Lessons. III. The Senates of the Continent. IV. General Considerations and Reflections. V. Applications to the Present Problem in England.

This last chapter contains the gist of the author's thought. Both his theorizing and his study of the experience of other lands have convinced him that a second chamber is essential, especially in order to secure the rights of minorities; that in upper chambers there is great danger of partisanship, and that the House of Lords, by reason of its composition, is inevitably a partisan body; that in the House of Commons the party system is a necessity, and that, since the House of Lords cannot adapt itself to democratic conditions, there is necessitated a change in its composition. For the retention of a considerable hereditary element, he adduces arguments from science; from "the view of the dependents of class ("True political justice is shown by evincing toleration and respect even towards the views and wishes of parasites and flunkeys."); and from history. ("In a land where history has moulded every institution in the past, it would be a crime not to allow

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it to have some share in moulding this institution in the future.") From his study of upper chambers in other countries, he reaches the conclusion that in a developed and established democracy, the elective system (in contrast with the nominative) of limiting the hereditary power in the upper chamber is probably the only way of rendering that chamber strong and effective.

After subjecting to criticism the various proposals for the reform of the House of Lords, (that of Lord Newton's Committee, of Mr. Balfour and the Conservative Opposition, and the Liberal Resolutions) he presents his own plan;

COMPOSITION OF THE LORDS.

Hereditary Lords. (Not including Princes of the Blood Royal) To be elected by the total number of existing peers.....	100
Nominated Life Peers. To be nominated, three each year by the King, on advice of his ministers, until complete.....	30
Elected Members. To be chosen on the same franchise as the Commons, to sit for nine years, but one third to retire by rotation every three years.....	130
	260

The question of the powers of the reformed House of Lords he thinks will settle itself, when once the composition of the House is determined but suggests that it would be wise to abolish the financial veto of the Lords, and that for ordinary legislation the summary three-sessions procedure might be adopted, retaining for constitutional amendments, however, a full suspensory veto, an absolute deadlock being avoided by a referendum, by a simultaneous dissolution of the Lower House and of the elective part of the Upper, or by "swamping." "The present composition and powers induce each Chamber to disagree with the other and to misrepresent its motives; the changes which our scheme introduces into both should induce them to meet, to respect, and, above all, to know one another." The book closes with the sufficiently chastened aspiration; "At least it is no ignoble hope to believe that . . . it is not folly to dream of a time when our Constitution shall again be a thing of pride to ourselves and of wonder to others."

More than one-third of the book is taken up with Appendixes; Tables illustrating the composition and powers of Colonial and Continental

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Upper Chambers; Colonial Opinion *v.* Downing Street, in parallel columns, as to the bi-chambers in the Colonies. Thirty pages are devoted to Notes and Illustrations, and eight to A Working Bibliography.

The book represents a diligent accumulation of facts, but the results have not been set forth effectively. A fuller presentation of political conditions in some countries whose experience has been most similar to that of England would have been of more service than details as to Upper Chambers which have little to suggest. There are abundant evidences of haste; the page of Corrigenda and Errata might have been doubled. The author's references to the United States show scant acquaintance with American conditions. He dismisses consideration of the United States Senate with a word, because in his opinion its Federal composition makes it inapplicable. Yet he might have found here important light as to the effects of relatively small numbers, long terms and gradual renewal, in all of which respects it served as the model for the Upper House in France and in the English Colonies. He deems American State Senates more worthy of attention for his purpose, yet his bibliography shows no acquaintance with Reinsch's *American Legislatures* nor with any other special studies of recent date; the only one which he cites is a study of the bi-cameral system, ending with the eighteenth century. It is not easy to recognize F. N. Thorpe in "F. N. Thome." The author's desire to avoid exaggeration is certainly sustained by his statement that of "the independent States" which make up the United States, "some are as large or larger than Yorkshire or Wales."

An author who expects his painfully gathered material to be used should not grudge the time necessary to make it usable. There is no distinction in character between the footnotes scattered through this book and many of those relegated to the thirty-page section at the end. If the reader, for example, on p. 62 wishes to follow up n. 19. he turns to the back of the book, only to discover that there the notes are arranged in chapter-sections. After fumbling back through thirty-five pages, he finds that he had been reading Chapter II. Turning with confidence to the appropriate section, he succeeds in finding n. 19,—and that refers him to Appendix V. None but the determined reader will attempt many such quests.

GEORGE H. HAYNES.

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The Governance of Empire. By P. A. SILBURN, Member of the Legislative Assembly of Natal. (London: Longmans, Green and Company, 1910. Pp. xi. 347.)

The purpose of the author is, in his own words, "to present a colonial view of the imperial idea and to arouse a greater interest and pride in the empire beyond the seas." His plan of work is to apply the lessons recorded by the experience of federal government in the past to the British world empire. The author begins his work with a summary of imperial government in the past and present; following this with a historical account of British imperialism, he then discusses such subjects as the dependent races, sea power, defence, communication, and commerce. In the last chapters he unfolds a plan for the imperial senate in an empire of federated states.

The book is a commentary whose point of view is dominated by certain preconceptions of the author. Among these is a violent antipathy against socialism, so called; like many contemporaries the author condemns as socialism any political tendencies which seem inconvenient to him. Thus he sees in the budget of 1909 "subtly wrapt all the evils of socialism and few, if any, of its virtues." The author's opinion that, when a demoralized collection of self seeking politicians endeavored to acquire despotic sway by influencing the opinions of the people, the House of Lords did their duty to their King, the empire and the British nation, in protecting the people against their own unscrupulously worked-up tempers,—is certainly naive. For effective resistance to the wave of socialism he pins his faith to the principle of social aristocracy. He believes that the judicious use of the power of raising persons to the aristocratic classes will do far more good work in checking the spread of socialism than all the anti-socialistic associations in Christendom; for the same reason he also demands the extension of aristocratic ranks to the out-lying parts of the empire.

Another fundamental belief of the author's is that an Anglo-German war is inevitable. In this situation he considers it the part of wisdom, which a Pitt or Disraeli would follow, to repeat the precedent of the destruction of the Danish fleet at Copenhagen and moreover to profit by the example set by Napoleon in 1808 when he limited the Prussian army and garrisoned French troops in Prussian fortresses. Incidentally it is his belief that Japan is likely to attack Great Britain at the very time when Germany is making her war.

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While grotesque opinions like these and the entirely reactionary temper of the author mar this work, they do not entirely destroy its value; there is enough correct information and sane opinion left to give the book a respectable position among serious treatises. Some of the chapters, such as that on the empire and the press are highly interesting. The main thesis of the author is that the disfranchisement of colonial citizens in matters of imperial concern must cease. He briefly reviews the various schemes of imperial federation that have been suggested, and finally develops a plan for an imperial senate of 216 members, elected by the legislatures of the component parts of the empire. The British cabinet is also to act as the ministry in this senate. Imperial questions must first be submitted to this body, but its powers are advisory only; before going into effect laws passed by it must receive the consent of the legislature or legislatures concerned. The author claims for this plan the advantage that it would not necessitate a radical modification of the parliamentary system as now established.

PAUL S. REINSCH.

Administrative Problems of British India. By JOSEPH CHAILLEY, translated by SIR WILLIAM MEYER. (London: Macmillan and Company, 1910. Pp. xv, 590.)

The book before us is a translation of M. Chailley's "*L'Inde Britannique.*" The title chosen by the English translator is too narrow, as the book really deals with the conditions of Indian life and the methods of British government in India, and only incidentally with administrative problems. The book therefore offers far more than we are led to expect from its title, in fact it gives a complete survey, though summary in part, of religious, social, economic, and political conditions in India, including also such topics as caste, codes of law, and education.

The work of M. Chailley is quite unlike the books ordinarily produced by Frenchmen writing about India, in that he looks upon British rule and its methods with a great amount of sympathy. He is a close student of British colonial methods, and in the preparation of this work he enjoyed the coöperation and assistance of Sir William Meyer, his translator, as well as of other British officials. The Indian press has criticised his work as being unduly favorable to British rule,

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as in fact being almost official in its opinion and view, and proportionately unappreciative of Indian character and aspirations. The sound qualities of the treatise will however be generally acknowledged; it is a clear, fair, and exceedingly interesting presentation of the state of contemporary India.

It would be useless to attempt in this place anything like a summary of the work; suffice it to indicate a few characteristics and conclusions. The author notices the deep social cleft between the British officials and native society. The former live entirely by themselves without seeking contact with the native life about them; unlike the earlier governors of India, they have as a rule no personal relations with its people. In speaking of Indian society the author uncovers many difficulties: the common people are wasteful, improvident and lazy; large expenditures for unnecessary festivities and ceremonies deliver them into the power of the money lenders. It is possible that on this point the author's judgment has been somewhat too much influenced by the official view, leading him to exaggerate defects which undoubtedly exist. The class of active politicians he finds selfish in their aims, and out of touch with the people. The wealthier class, the politicians, and the multitude, have little understanding for or sympathy with each other. In this matter also, there is room for difference of opinion; the events of the last five or six years have brought about a deep political movement which extends down through all the layers of society and is bringing about a feeling of common interest among the Indian people.

The vexed question of the more general admission of native Indians to higher office the author deals with in a sense favorable to such a policy. He recognizes however the insufficiency of literary examinations and approves the English insistence upon character rather than mere intellectual gifts. He also favors the further extension of the system by which the various interests of the community are represented in the legislative councils. In order to leaven the intellect of India it seems to him desirable that a large number of young men should be sent to European and American institutions of learning, at the expense of the government. The author does not contribute anything new to the study of the economic situation in India; he himself declares that it is impossible to arrive at a connected view upon this matter on account of the inadequacy of existing statistics. He, however, gives it as his opinion that the rate and amount of the

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land tax have not really been increased; and also that seventy-five percent of the lands have come into the hands of money lenders.

Considered as a whole the book is one of the most accurate, fair, and readable treatises that have appeared upon Indian affairs; it affords an admirable introduction to the subject for students and is full of suggestive thought.

PAUL S. REINSCH.

The Roman Empire: Essays on the Constitutional History from Domitian (81 A. D.) to the Retirement of Nicephorus III, (1081 A. D.) By F. W. BUSSELL. (London and New York: Longmans, Green and Company, 1910. 2 vols. Pp. xiv, 402; xxiii, 521.)

The title of this work should not lead one to suppose that it is, in any proper sense, a constitutional history of the Roman Empire Those persons who have a lingering fondness for the so-called "philosophy of history," with little taste for the critical examination of historical facts, will no doubt, find some satisfaction in perusing these pages. The author makes no claim to supersede the histories of Gibbon, Finlay, Bury, and Hodgkin; but he hopes to find in his peculiar method of treatment some justification for his own work. Although he claims to have come into relation with such critical historians as Freeman and Pelham, there is little in his volumes to suggest the methods pursued by these Oxford professors. On the contrary, the author seems to have fallen, at some time of life, under the more idealistic influence of Fichte and Hegel; and continues to look upon history, if not as the embodiment of abstract truth, at least as furnishing suitable texts for philosophical homilies. In his introduction, it is true, he professes not to "believe that vague and *à priori* generalities of an age can form a substitute for genuine acquaintance"; yet he presents himself as an apologist for what he is pleased to call "the subjective treatment of history," and claims that one may learn more from one page of Hegel's "audacious generalities, his subsuming of events coercively under his preconceived categories, than from the dry recital of the most severely conscientious historians." In his treatment of the subject before him he claims to assume "the rôle of the philosophical onlooker," whose "subjective appreciation of a period" will not be interrupted by the "leaden sediment of footnotes."

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With such a view of history and of the function of the historian, the author could hardly be expected to give any very clear analysis or detailed description of the political institutions of the Roman Empire; and perhaps he has forestalled any such expectation by the sub-title which he has prefixed to his work. These "Essays" were, according to his statement, "written for the use of general reader and modern politician." The scientific student has, therefore, no one but himself to blame if, in searching these pages for any real enlightenment upon the special features of the imperial system, he should be doomed to disappointment.

That the author shows considerable knowledge of historical facts cannot be questioned; but these facts are so often obscured by rhetorical verbiage as to render their real significance a matter of doubt. The author has also an extensive command of the English language; but his style strikes one as being more often translucent than transparent,—marked by an attempt at brilliancy rather than a desire for clearness. He may also be credited with dealing with wide generalizations; but these general statements are often merely favorite political theorems by which he would criticize the postulates of current political philosophy or the defects of existing political systems, rather than legitimate inductions from the facts of Roman history.

An example of his philosophical method, or "subjective treatment of history," may be obtained from his first chapter, entitled, "The Reign of Domitian and the Era of the Antonines (81–180 A. D.)." Whether either the "general reader" or the "modern politician" would be likely to gather from the diffuse and often ambiguous phraseology with which this chapter abounds any clear conception of the Roman constitution during the period under treatment, is extremely doubtful. What seems to be the author's most prominent, or at least most pertinent, thought might perhaps be expressed in the not very novel proposition that Roman imperialism was a species of paternalism transmitted, not by heredity, but by a "sort of apostolic succession." During the second century, he says, everything told in favor of this principle. To be more specific, he formulates the grewsome statement that for this "the ground was well prepared (indeed well mown) by the judicial or judicious murders of Domitian" (I, 39). By this process of dialectics he is thus able to construct the remarkable paradox that the autocratic and homicidal policy of Domitian was the necessary preparation for the benevolent and paternal rule of the Antonines.

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There are certain other chapters in this volume which would doubtless present the author in a more favorable light. He has, for example, brought out with some degree of clearness the fact, now generally accepted, that the Illyrian emperors prepared the way for the later imperialism of Diocletian and Constantine. He has also given proper emphasis to the vacillating policy of these princes in respect to the admission of the barbarians into the Empire. But he soon relapses into philosophical musing when he attempts to explain the chief cause of the later imperialism, by referring it to "the inevitable tendency to centralization." He seems here to have forgotten or to have abandoned the dictum of Hegel that history is the realization of freedom. To support his own historical theorem, he cites examples of political centralization. He asserts that "the one abiding result of that strange uprising of mind and matter in 1789 was to fix the triumph not of individual liberty, but of central control." He even cites the centralizing tendency of the American Civil War—apparently to throw light upon the development of the later imperialism of Rome. Having referred the centralizing movement under Diocletian to the inevitable tendency to *centralization*, he encounters some difficulty in explaining the collapse of the Empire after Justinian. It would, however, have been quite consistent with his previous method to refer this collapse to the inevitable tendency to *decentralization* by citing examples of political dissolution. But it seems more reasonable to him to refer this collapse to "accident," which he now exalts into an historical principle. "The secret cause," he says, "of the collapse of great systems, whether of Charles or of Justinian, is one of the most abstruse problems of history; and the latter case is specially obscure. Not seldom in Roman history we tremble on the brink of a catastrophe. What seems like pure accident alone wards off the fatal day; the cry of the geese on the Capitol, the sanguine temper of Camillus, the charms of Capua, the strange daring of the nervous Octavian, the clear sight of Diocletian, the sudden inspiration of Constantine, the spasmodic patriotism of Heraclius, the protestant and worldly spirit of Leo, and (to pass over several centuries and make generous allowance) the chivalrous influence of the house of Comnenus or Palaeologus" (I, 246). To make this principle even more general, he adds, "the 'high politic' of Europe is sometimes settled in a Tyrolese shooting-box." The collapse of the Empire after Justinian is thus explained by "the grotesque and fatal accident that carried Phocas to the throne."

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Of course this kind of philosophy, which refers historical movements to impersonal tendencies or casual accidents, will hardly appeal to one who has been trained in the scientific methods of the present. But it is precisely the scientific, as well as the political, methods of the present day that the author seems to hold in special derision. Indeed, one of the chief objects which he has evidently in mind in his elaborate disquisitions upon the imperial system is to evolve certain canons of criticism by which to condemn modern political ideas and institutions. With him the Roman empire is the idealization of parental control, which alone ensure efficiency and stability; hence, all that is inefficient and unstable in modern governments is due to lack of conformity to the parental features of the imperial system. With the modern theory of the state and concept of sovereignty he has no sympathy. The discussions regarding the "seat of sovereignty" he regards as simply academic, and a waste of time. Failing to attach any legal significance to sovereignty, he regards it as the "Will of the People," but not, he is careful to say, "in the vague and superficial meaning which we attach to such a phrase today." To paraphrase what is evidently his meaning, sovereignty is the general consensus of all the forces, seen and unseen, which contribute to the development and to the character of the government in other words, "the Time-Spirit," or "the Idea." This mystical idea of sovereignty is still further mystified by making its chief feature paternalism, or the parental control of the people. To enforce the transcendent importance of his peculiar notion he affirms that upon this "conception of *parental* sovereignty . . . the fate of Europe may depend in the future." While we are sometimes at a loss to perceive the author's real point of view in all these discussions, which leads him thus to extol the imperial system of Rome and to be so solicitous regarding the needs of modern society, our curiosity is finally satisfied by a succinct statement with which he closes his first volume:—"The Roman Empire tried to satisfy democracy in its lowest and most obvious requirements; it was a Crowned Socialism." (I, 370).

It is a curious feature in the literary construction of this work, that the second volume covers practically the same period as the first—beginning with 400 A. D., and closing with 1080 A D. The reason of this second review of the Roman Empire is not explained, and can only be inferred. It is evidently due to a subsequent and more thorough and detailed study of the period. The chronological arrange-

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ment has been entirely recast, the subjects discussed are more specific, and the mode of treatment is, in many respects, more satisfactory and critical. For example, an analytic review is made of the character and working of the "civil service" of the later empire; and the ideals and failure of the autocratic administration are illustrated by an examination of original texts, namely, the *Treatise on Magistrates* by John Laurentius, the *Secret History* of Procopius, and the *Novels* of Justinian. The author's acquaintance with the *Corpus Juris* is evident from his frequent quotations from the *Novels*,—in which he has apparently abandoned for the time being his early prejudice against the "leaden sediment of footnotes." This single chapter, devoted to a review of original sources, would lead one to believe that the writer might not have proved unsuccessful as a critical historian. But the main part of this volume consists of highly-colored panoramic views of the various dynasties which followed one another in the Eastern Empire. Whatever lends itself to a philosophical interpretation or a rhetorical treatment is specially dwelt upon. Particular facts and characters which should be explained for the benefit of the "general reader"—or omitted entirely—are often made the mere subject of passing allusions, leaving an indistinct impression upon the reader's mind.

WILLIAM C. MOREY.

The Revision and Amendment of State Constitutions. By WALTER FAIRLEIGH DODD. (Baltimore: The Johns Hopkins Press, 1910. Pp. xviii, 350.)

Mr. Bryce, when writing the American Commonwealth in 1887, spoke with great earnestness of the rich field for historical and constitutional investigation to be found in the study of our state constitutions and governments.[1] Since that time much work has been done along the line of his suggestion, and the Johns Hopkins Studies have frequently published valuable results of these efforts. The book now under consideration is another contribution to the literature of the subject, and entirely sustains the high scholarly rank of its predecessors.

Judge Jameson's book on "Constitutional Conventions" comes more nearly to the subject now treated by Mr. Dodd than any other

[1] American Commonwealth, vol. I, p.p. 411–413. (ed. 1897.)

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work hitherto written, but as the latter points out, Judge Jameson constructed a theory in regard to constitutional conventions, to which the facts are made more or less subordinate. Mr. Dodd, on the other hand, gives a view of the practice of the present day concerning the revision or amendment of state constitutions.

The author has evidently delved deep into the abundant materials at his hand, and has produced a work that will prove of great value to the student of present day problems and political conditions. He treats successively of the first state conventions and their subsequent development, the legal position of the convention, the amendment of state constitutions, and the working of the constitutional referendum. The above statement will give a clear idea of the scope of the work, but it will not be amiss to mention several of the more striking matters discussed.

Mr. Dodd states that the distinction of the constitution from ordinary statute law is the fundamental principle of constitutional development (p. 26) for the American colonists had the conviction that principles of government are permanent, and may be changed only by the people (p. 22). He well might have added that this was only a logical and consistent following out of the doctrines of Rousseau—so potent in their influence in America at that time. However, the distinction between constitution and statute was not as clear in 1776 as it later became, while the development of this idea and of a judicial sanction for the enforcement of the distinction was late in Vermont and Pennsylvania on account of their peculiar institution known as the Council of Censors (pp. 30, 37). During more recent years, the practice of incorporating in state constitutions detailed legislative enactments, or what Dr. Woodrow Wilson has well called "non-constitutional provisions,"[2] and also the increased popular participation in legislation through the use of the referendum, have caused to a large extent the disappearance in substance of the distinction between constitutions and statute law (pp. 249–250).

The policy of submitting constitutions to a popular vote first developed in New England as a result of the town meeting (p. 64), but Mr. Dodd takes the ground that at the present day "the only rules positively binding a convention to submit its constitution to the people are those contained in the constitution which the convention may have been called to revise" (p. 69).

The process of amending the constitution by means of the ordinary

[2] "The State," p. 474."

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legislative organs of the state originated in the South (p. 120), and the method has proved so convenient that many of the newer states have entered upon the excessive enjoyment of constitutional tinkering. For illustration, during the decade, 1899–1908, the people of the several states voted upon four hundred and seventy-two constitutional questions, of which fifty-one were submitted in California, fifty in Louisiana, thirty in Minnesota, twenty-two each in Oregon and Michigan and twenty-one in Florida. Of course the larger number of these amendments related to matters of detail, in which the public was not much interested (pp. 268–271). The elector either cast his vote upon questions upon which he had no real opinion, or refrained from voting at all and the decision of the matter went by default (p. 279). The author thinks that it has come to be clearly recognized that the constitutional referendum is working badly, and the four following plans are being tried or are suggested. (1) The compulsory referendum should be retained for all constitutional measures of fundamental importance. (2) Matters of detail should be left to the discretion of an increased majority of the legislature, subject to popular vote at the petition of a sufficient number of electors. (3) There should be an extension of popular control over the proposal of amendments. (4) The plan of distributing to each voter the text of questions is preferable to mere publication in the newspapers (pp. 279, 291–292).

As to the control of the courts over constitutional amendments, Mr. Dodd thinks that for some time it will be as strictly exercised over laws approved by the people as over those passed by legislative bodies. However, "the courts have probably stretched to its furthest limit their power over legislation and there may soon come a saner and more reasonable judicial attitude toward state enactments. The approval of laws by the people may have some influence in making courts more cautious, and in bringing them back more nearly to their true function as interpreters rather than as makers of law" (p. 258).

Finally, it may be remarked that the index to Mr. Dodd's excellent volume, while accurate as far as it goes, is incomplete and inadequate, as the reviewer soon realized in the practical difficulties of reference which he encountered.

WILLIAM STARR MYERS.

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Biographical Story of the Constitution; A Study of the Growth of the American Union. By EDWARD ELLIOTT. (New York and London: The Knickerbocker Press, G. P. Putnam's Sons, 1910. Pp. vii, 400.)

This work undertakes to present in twelve chapters an account, based upon the best secondary authorities, of our constitutional history as influenced by the thoughts, words and actions of certain of our great men. After a chapter on "The Fathers," Professor Elliott takes up successively Alexander Hamilton, James Wilson, Thomas Jefferson, James Madison, John Marshall, Andrew Jackson, Daniel Webster, John C. Calhoun, Abraham Lincoln, Thaddeus Stevens and Theodore Roosevelt, and discusses the evolution of the Constitution of the United States, in the periods of the Nation's history covered by the activities of each of these men. The influence of each one is suggested by a phrase attached to his name, thus "Growth through Administrative Organization" is ascribed to Hamilton; "Growth through Speculative Forecast" to James Wilson; "Retardation through Sectional Influence" to Calhoun; and "Growth through Reconstruction" to Stevens; etc. In every case a very fair account is given of the principles for which each man stood; while, thanks to Professor Elliott's easy style, the addition of considerable biographical matter contributes to the interest of the work. There is, in the book, little critical analysis, either from the standpoint of the lawyer or from that of the political scientist. Indeed it is not easy to state Professor Elliott's point of view, as this seems to reflect largely the authorities which he has followed, and to expand with the broadening of constitutional interpretation until the last chapter. Even here it is difficult to ascertain whether the change of ideals, which has marked recent years, does or does not meet with Professor Elliott's approval. A short bibliography is appended to the work. A somewhat unusual feature is the appendix of selected documents significant in the constitutional history of the United States, which covers over a hundred pages. As there is not room to present all these documents in their entirety, and as all are readily accessible elsewhere, one wonders whether this space might not more wisely have been devoted to an expansion of the main part of the volume. Unusually well written and free from partisan spirit, the book should find its chief usefulness in the work of public libraries, as a general introduction to wider reading in American Constitutional History.

ST. GEORGE L. SIOUSSAT.

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A Treatise on the Law of Labor Unions. By W. A. MARTIN. (Washington, D. C.: John Byrne & Co., 1910. Pp. xxv, 650.)

One evidence of the increasing importance and complexity of American trade-union law is the increasing number and bulk of the books dealing with the subject. Cogley's *Law of Strikes, Lockouts, and Labor Organizations* was published in 1894; Stimson's *Handbook to the Labor Law of the United States*, in 1896; the first edition of Cooke's *Law of Trade and Labor Combinations* in 1898 and a much enlarged edition under the title *Law of Combinations, Monoplies and Labor Unions* in 1908. Mr. Martin's bulky volume entitled *A Treatise on the Law of Labor Unions* is thus the latest in a rapidly increasing class of books.

The distinctive characteristic of Mr. Martin's book as compared with the other American works dealing with the same subject, is that it is devoted entirely to the law of trade unions and that it covers the entire field of trade-union law. Mr. Cogley's treatise deals almost exclusively with the law of strikes and lockouts. A large part of Mr. Stimson's little book is given to the discussion of other phases of labor law, *e. g.*, factory acts, employers' liability, etc. Mr. Cook's book was concerned with labor unions only in their relation to the law of combinations. It follows that Mr. Martin deals with many phases of the law of trade unions untouched or only briefly treated by his predecessors in the field. Notable illustrations of the fullness of Mr. Martin's treatment of the subject are his discussions of the law relating to the internal administration of the unions, to union membership, and to union labels.

Mr. Martin's method of treatment is distinguished chiefly by the exhaustive character of his citations, and by the excellence of his arrangement of the matter for ease in consulting. It is distinctly a topical method. He examines the cases bearing upon each particular point and condemns or approves cases according as they agree or disagree with the majority of cases bearing on that point, without much reference to how far the law of trade unions can be referred to concordant general principles. He makes no attempt to bring forward any one principle or set of principles and to establish them as controlling. His work is thus in marked contrast to that of Mr. Cooke in the same field.

The English and Canadian decisions have been considered. Also recent legislation in Canada and England—*e. g.*, the Canadian Indus-

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trial Disputes Act and the English Trade Disputes Act of 1906—relating to the law of trade unions are noted. A feature of the work which will interest students of trade unionism and will commend the work to the practising lawyer is the collection in the Appendix of a number of approved forms of pleadings, injunctions, and restraining orders.

G. E. B.

Corruption in American Politics and Life. By ROBERT C. BROOKS. (New York: Dodd, Mead and Company, 1910. Pp. 309.)

Within recent years the American nation has experienced a very significant social and political upheaval as a result of the exposure of corrupt and illegal methods in political life. The influence exerted by private business interests in public affairs has been exploited until the people have become thoroughly aroused. Popular magazines have vied with each other in bringing charges against individuals and corporations quite regardless, at times, of a fine sense of honor in hewing close to facts and evidence. Committees of investigation and courts of justice have brought to light conditions shocking to the moral sense of every self-respecting citizen. An awakened public conscience with respect to the evils thus laid bare has manifested itself in strengthening the arm of the law so as to prevent political malpractices and to deal with them more effectively when discovered.

The work of Dr. Brooks deals with various phases of the problem of corrupt practices which have become issues of national importance. In accordance with the words of the preface the volume was prepared and published as a pathological study of a group of social ills in the cool and systematic spirit of the scientific investigator of physical diseases. The volume is comprised of chapters on apologies for political corruption and the nature of political corruption both of which are reprints from articles previously published in the *International Journal of Ethics* and the *Political Science Quarterly* and separate studies on the persistence of corruption—corruption in the professions, journalism, and higher education—corruption in business and politics—campaign contributions and corruption and notoriety.

The author discusses fully the nature of corruption, its prevalence and influence on American life, the methods of combating the resulting

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evils and the outlook with respect to the future. The various types of corruption with the corresponding consequences upon public life are fully considered. Although all of the more important aspects of official sinning for private gain are carefully examined, Dr. Brooks is evidently optimistic in his conclusions and holds forth a hopeful outlook for the future. The point of view characteristic of the entire volume is clearly stated in the following sentiment expressed in the first chapter: "Mistakes will be made in all lines, the process of reform will be slow, but that we are on the right road, and that in the end the grosser forms of corruption that disgrace and disgust the present era will be eliminated there can be no doubt." Thus after presenting to the reader a mass of unpleasant details on the nature and evil influence of official misconduct one is reassured that in spite of all superficial appearances the relative extent and harmfulness of corruption are decreasing in the more progressive countries and that "never before have men coöperated on so large a scale and so honest a basis as here and now."

By far the most valuable portion of the volume is that part in which the various laws of the states enacted to reduce and eliminate corruption are analyzed and discussed. One can not help but wish that more space and attention had been given to this very fruitful subject. Unquestionably the public has become aroused with respect to the evils of campaign contributions, corrupt practices, and corruption in public life in whatever form manifested as may be readily gathered from the many acts relative to these evils, which have been entered upon our statute books and the mass of bills brought up for consideration. What laws have been enacted, to what extent they have been enforced, wherein lie the defects of this type of legislation and what are the most practicable methods of securing better results in the framing and enforcement of such laws—these are matters of extremely vital interest on which our legislators and administrators desire surer and safer guidance. Unfortunately this volume has little to offer on these definite practical issues of the problems of corruption. Certain portions of the detailed account of the theory and principles of corruption and the almost wearisome repetition of commonplace remarks might well have given way to these more concrete matters.

In all probability the work will be of great interest to those concerned with political theory and sociological problems. As a contribution to this field rather than in the realm of practical politics

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the volume has considerable value. The careful painstaking analysis of the nature of corruption with the concomitant evils involved, the fair and accurate presentation of the evidence which has been so sensationally exploited in the magazines and the definitely sustained conclusion that the many exposures of recent times are an evidence of a keener moral sense rather than an indication of a progressive degeneration of American life along mercenary lines—all combine to furnish in this volume a series of studies of timely interest.

CHARLES G. HAINES.

Introduction to Political Science. By RAYMOND GARFIELD GETTELL. (New York: Ginn and Company, 1910. Pp. xx, 421.)

"The chief purpose of this book is to combine, in brief compass, the essentials of political science . . . and, by showing the interrelations among the various divisions of the subject, to bring out more clearly the essential unity of the state . . . outlining and suggesting the origin, development, organization, and activities of the state." The "volume aims to add little to the sum total of human knowledge." The purpose which the author thus indicates in his preface seems to be fairly well achieved, and a book has resulted which, for the sort of student the author has had in mind, will doubtless prove satisfactory. The nature of the task has made it necessary to deal very briefly with a large number of subjects, but at the head of each chapter one finds a list of references to further discussion of the topics of the chapter; and at the beginning of the book two lists of "general references,"—one containing 247 titles of books and the other 35 titles of periodicals. The references seem to be carefully selected.

It is difficult to understand, however, why any faculty should prescribe or any undergraduate student elect a course for which this book would be the text,—a course in which must be covered in one year the nature of the state, including such topics as its physical basis, its theory, municipal law, international and constitutional law, the machinery of federal and state government, including political parties, colonial government, and a number of other things. Such a course must certainly imply a large amount of theorizing on a very narrow basis of information. Assuming that the college year of less

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than forty weeks is to be devoted to a book of 400 pages, two weeks or less must suffice for the content of international law to which the author devotes twenty pages. The average undergraduate, after five recitations on the content of international law would still know nothing about it, and would therefore have no data on which to make inductions as to the "essential unity" of the state. Nevertheless, colleges do offer such courses, and to them this volume is commended.

An English scholar recently criticised our system of education and its tendency to give a smattering knowledge of a large number of things and a control of none of them. Is not his criticism largely justified by the sort of study of political science had in mind by our author? Further remarks on the subject may be found on pages 140 and 141 of the last number of this REVIEW.

EDGAR DAWSON.

The Great Illusion; A Study of the Relation of Military Power in Nations to their Economic and Social Advantage. By NORMAN ANGELL. (New York and London: G. P. Putnam's Sons, 1910. Pp. 388.)

As the author remarks in his preface, the present volume is the outcome of a large pamphlet published in Europe at the end of last year (1909) entitled "Europe's Great Optical Illusion." That pamphlet appears to have been the result of more than a decade of study and of discussion with men of light and leading in various countries. It aroused much interest and some severe criticism, in the light of which the present work has been revised and from which it appears to have greatly benefited.

The title of the book—The Great Illusion—may repel some fastidious or academic readers, but such should be assured that this is a serious and important as well as an interesting work which deserves the most careful study and consideration. Indeed, it may be doubted whether, within its entire range, the peace literature of the Anglo-Saxon world has ever produced a more fascinating or significant study. It is gratifying to those who appreciate the value and importance of the work that editions of "The Great Illusion" are to appear simultaneously in London, New York, Paris, Leipsic, Copenhagen, Madrid, Borgä (Finland), Leyden, Turin, Stockholm and Tokio.

To those who are more or less familiar with the writings of such

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veteran European publicists as Bloch, Fried, Lagorgette, and Novicow (see especially the latter's *Le Darwinism Social,* 1910), the leading ideas of this book are not new or original; but, unless the reviewer has been caught napping, Mr. Angell deserves the credit of first having introduced them to the notice of the English speaking peoples and of having given them such an attractive dress and such world-wide currency as to insure attention.

In view of the surpassing interest and importance of this volume, a few words devoted to its author (who must needs be an interesting personality) may not be amiss.

Though his name is conspicuous for its absence in the latest editions of both the American and English "Who's Who," we gather from the Preface that he was born in England, but "passed his youth and early manhood in the United States, having acquired American citizenship there." He assures us, moreover, that "the last twelve years have been passed mainly in Europe studying at first hand the problems here dealt with."

The work is divided into three parts. The Key to Part I on "The Economics of the Case" is Chapter III, entitled "The Great Illusion." The Great Illusion is that military and political power give a nation commercial and social advantages and that the wealth and prosperity of the defenceless nations are at the mercy of the stronger ones.

To destroy this "optical illusion," the author seeks in subsequent chapters to establish the following propositions:

(1) That conquest, the exaction of tribute, confiscation, devastation and exploitation on an extended scale are to-day physical and economic impossibilities. This is mainly due to the complex financial interdependence of the capitals of the world which has resulted from the establishment of an international credit system and the enormously improved facilities for communication within the last thirty years.

(2) That "it is a physical and economic impossibility to capture the external or carrying trade of another nation by military conquest." Large navies do not create trade (in other words trade does not follow the flag), nor can they destroy competition of a conquered nation by annexation. For example, if Germany annexed Holland, German merchants would still have to compete with Dutch merchants. Indeed, the competition would be all the keener, because the Dutch merchants would then be within Germany's customs lines.

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(3) There is no profit or economic advantage to be derived from a war indemnity—rather the reverse.

(4) That "the wealth, prosperity, and well-being of a nation depend in no way upon its political power. . . . The populations of States like Switzerland are in every way as prosperous as the citizens of States like Germany, Russia, Austria, and France. The trade *per capita* of the small nations is in excess of the trade *per capita* of the great" (p. 34). Their credit also stands higher (p. 38.)

(5) That a modern State does not *own* its colonies. They are not a source of fiscal profit, but rather the opposite. Consequently, there is no economic advantage to be derived by another nation from their conquest.

Part II is entitled, "The Human Nature of the Case." Its key is Chapter II on "The Psychological Case for Peace."

As shown in the preceding chapter (I), "The Psychological Case for War" rests mainly upon two false generalizations: (1) The unchangeability of human nature in the matter of pugnacity; and (2) The Darwinian view that struggle is the law of human existence and that the most warlike nations, presumably the fittest, are the ones which survive.

In the second and succeeding chapters of Part II, the author attempts to prove the following propositions:

(1) That the struggle which is the law of survival is not primarily a struggle between man and man, but a struggle of man with nature or his physical environment. "The planet is man's prey." The real or fundamental law of human nature is association or coöperation rather than pugnacity and conflict. In so far as there is conflict or division based on real interest, it is a conflict between democracy and autocracy, progress and reaction, or between Socialism and Individualism.

(2) That human nature is not unchangeable—quite the reverse in fact—in respect at least to those forms of pugnacity which lead men to quarrel and fight. As evidence that human nature *does* change, the author adduces the present attitude of the Anglo-Saxon toward the duel as contrasted with his earlier attitude; the abandonment by the Governments of Europe of their right, formerly generally acknowledged and exercised, to enforce uniformity of religious belief and worship; the abolition of slavery and the slave-trade; the disappearance of the belief in witchcraft; and, finally, the changed attitude of modern civilized man toward war itself.

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(3) That the warlike nations do *not* inherit the earth.

(4) That physical force is a constantly diminishing factor in human affairs and coöperation an ever-increasing factor. In general, force should only be employed to secure completer coöperation.

(5) That the modern State can no longer be regarded as a Person or homogeneous whole with a sense of collective responsibility and the right to employ force for the purpose of resenting wrongs which may be inflicted upon its citizens or subjects in foreign countries.

Part III entitled "The Practical Outcome" is divided into three chapters on "Armament," "The Relation of Defence to Aggression," and "Methods." Mr. Angell does not agree with those peace advocates who demand immediate or unconditional disarmament. He even defends the attitude of the German Government in rejecting, under present conditions, the proposals of Great Britain looking toward an agreement for the limitation of armaments. Given the illusion that the exercise of military or naval force spells economic advantage, neither of these great commercial rivals could rationally act otherwise than they are acting. The thing to do is to get rid, if possible, of the "Great Illusions." To this end, we must rely upon the general progress of ideas, campaign of education, and coöperation between those opposed to armaments and agression in both countries. "When Europe as a whole realizes that, just as the exercise of physical force is in the last analysis futile in the religious domain, so is it futile in the economic domain, the whole stupid mystification will disappear." (p. 350).

With nearly all the foregoing suggestions and propositions, the reviewer finds himself in hearty sympathy and accord. There is, however, one proposition from which he feels bound to dissent. It is anarchic and therefore dangerous to deny that the State is a Person with collective rights and a sense of collective responsibility. While it is undoubtedly true that international relations are no longer based upon force, that the doctrine of sovereignty has been largely supplanted by the ideas of international solidarity and interdependence, and that, both on the side of Labor and Capital, modern society is organizing itself internationally into classes or strata; nevertheless the ideas of patriotism, nationality, and international personality of the State must needs be preserved as corrective or counteracting principles or tendencies. The world is not as yet prepared for that degree or stage of cosmopolitanism or humanitarianism when national boundaries shall be obliterated, patriotic sentiments ignored, and

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the inevitable class struggle shall have been mainly organized on an international basis. The political power of the State is still a powerful factor in human affairs, and the growing sense of collective or State rights and duties needs encouragement and emphasis rather than deprecation and attack.

AMOS S. HERSHEY.

Public Ownership of Telephones on the Continent of Europe. By ARTHUR N. HOLCOMBE. (Boston and New York: Houghton Mifflin Company, 1911. Pp. xx, 482.)

This book appears as volume VI of *Harvard Economic Studies*. It was awarded the David A. Wells prize for the year 1909–10. The author is instructor in government in Harvard University. The immense development of the telephone in the United States during recent years coupled with the fact that although the telephone is conceded to be the most monopolistic of all public utilities, it has been subjected here to the least control, and its public ownership and operation have hardly been thought of, makes the publication of this book especially timely. In Europe, monopoly and public ownership, though not universal, are now well established as the prevailing policies. Dr. Holcombe's book, with its careful historical review of the development of the telephone in Germany, Switzerland, France, Belgium, Holland, Austria, Hungary, Italy, Spain, and the three Scandinavian countries, will serve as an excellent antidote to Casson's *The History of the Telephone*, which is written with a single eye to the glorification of private telephone operation in general, and of the American Telephone and Telegraph Company in particular. Casson is especially contemptuous toward governmental interference and refers to European experience in the most disparaging way. Holcombe gives us the facts. The two authors agree in upholding the principle of monopoly operation in the telephone industry as the only rational one, but that is about as far as they go together. What Holcombe says on this subject might almost be considered the last word in an argument that has only one side.

"In the telephone business competition is a failure," says he. "Considered as an automatic arrangement for maintaining an accurate adjustment of the supply of telephones to the demand, it easily gets out of order. So long as it remains in order, its effect is to diminish

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the utility of the service to render which telephone facilities are created. For a while it is capable of bringing about low rates and stimulating a rapid development. Sooner or later, however, the self-interest of the competitors or the disillusionment of the public authorities will cause the termination of competition and the substitution of a régime of monopoly. This has been the result everywhere in Europe where competition has once existed, except in Stockholm, and in Stockholm the bankruptcy of the private company or the purchase of its business by the government is only a matter of time. Competition as a permanent status in the telephone business is neither desirable nor possible."

Turning to the European substitute for competition, namely, government ownership, Dr. Holcombe says: "We are now in a position to affirm with tolerable certainty in the cases of at least three countries on the continent of Europe that state agency either has or has not bungled miserably." Applying the tests of efficiency set up as a standard to go by, he finds that "the German and Swiss telephone authorities have maintained a telephone service that has been both adequate in quantity and satisfactory in quality." In France, however, the results have not been so good, a fact that appears to be due to certain defects in French administrative policies which are explained at length. But Switzerland is awarded the palm. "The Swiss secured a wider and more prompt utilization of the telephone," says Dr. Holcombe, "than occurred anywhere else on earth, led the way in the substitution of measured service for unlimited service, and have ever operated a technically sound system at rock bottom rates." This is a most interesting fact, especially as the author is inclined to credit the exceptional success of government telephone in Switzerland in some measure to the democratic character of Swiss institutions. Dr. Holcombe does not push the matter very far, but in reading his book one is tempted to inquire whether the failure of the Philadelphia oligarchy to operate the municipal gas works efficiently and the neglect of New York's Tammanyized government to stop the leaks in the municipal water mains is any proof at all that the people of Oregon or Los Angeles could not operate the telephone successfully if they undertook to do so, or indeed, that Philadelphia and New York might not do well under forms of government by which the people themselves were given more power and more responsibility. After all, is not democracy—real democracy, such as prevails in Switzerland, Oregon and Los Angeles—more likely to produce efficient

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government, especially in the operation of public utilities, than all the precious systems that are striving everywhere to protect legislators, mayors and judges from the "ignorant clamor" of the citizens whose servants they are?

Holcombe has given us a careful, exhaustive and impartial book. It will be a necessary reference book wherever the problems of telephone franchises, telephone consolidation, telephone rates, telephone service and public regulation are acute.

DELOS F. WILCOX.

Cases on Administrative Law, etc. By ERNST FREUND, Professor of Law in the University of Chicago. American Case Book Series, James Brown Scott, General Editor. (St. Paul: West Publishing Company, 1911. Pp. xxi, 681.)

The preparation of a case book on administrative law by so learned a lawyer as Professor Freund, the inclusion of such a book in a series of books intended for the instruction of law students, and its publication by one of the leading law book publishers of the United States, are all certainly indications that the American legal profession do not accept Professor Dicey's dictum that there can be no such thing as administrative law in countries whose legal system is based on the English law.

But while American lawyers thus seem to admit that there is an administrative law in the United States, there would not seem to be any agreement as to what the content of that law is. Professor Freund's choice of the topics to which his selection of cases is devoted is evidence of this lack of agreement. He seems to admit in his introduction that administrative law includes such subjects as officers, extraordinary legal remedies, municipal corporations, taxation, public health, elections, etc. He has, however, confined his attention, as his syllabus shows, to "Administrative Power and Action" and "Relief Against Administrative Action." He has thus omitted from consideration all questions relating to the formation of the administrative system, and the liabilities both of administrative officers and of the government in both its central and local organization for the acts of officers. His cases thus assume an administrative system in being and treat merely of the powers possessed by its various members and of the remedies open to

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the individual citizen against illegal action on their part. But this is not all the story. The somewhat artificial and arbitrary distinction made by American practice between the law in the constitutions, which is usually called constitutional law, and the law in the acts of legislatures, which is called statute law—a distinction based not on the character of the topics treated but on the form in which the law is found—makes incomplete, and in large measure unprofitable the treatment of any topic of public law which does not also take into consideration the limitations of governmental power to be found in the constitutions. Yet Professor Freund has, probably with the idea that distinctly constitutional questions are to be accorded ample treatment in the cases in constitutional law for which provision is to be made in the *American Case Book Series*, almost entirely omitted to consider the effect on the powers of administrative officers of the limitations contained in the constitutions. The result is that while his cases give a very fair idea of the way in which powers constitutionally granted to officers are interpreted by the courts, they do not give the student a really correct idea of the actual powers possessed by administrative authorities. Every student of our public law must, if he would really study that law, study in addition to these cases, the principles of administrative organization and as well the principles of the constitutional law.

This criticism of Professor Freund's conception of administrative law and of his realization of that conception,—if it can be called a criticism—does not, however, detract from the value of the work which he has done. For the cases are well selected, the notes are scholarly, in many instances indeed exhaustive, and do much to warn the student that in studying law by the case method he is studying the comparative jurisprudence of many jurisdictions rather than the positive law of a single state. This warning, it may be added, cannot be given the law student too early in his career. For in many instances, particularly in the case of the public law, which is so largely based on statutes and their interpretation, it is almost a useless task to attempt to compare the abstract merit of particular decisions. Who shall say *e. g.* whether the New Jersey rule, which permits the issue of the certiorari to review legislative acts of subordinate administrative authorities as well as their judicial acts, is better or worse than the New York rule which confines the issue of the writ to the review of distinctly judicial acts? Professor Freund has been obliged, naturally to select his cases from different jurisdictions, but if care-

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ful attention is paid by the student to the notes, and if the instructor calls attention to the peculiar doctrines of different states, there is little danger of confusion as to what the law actually is. The inclusion of what are at first sight conflicting cases, has the further advantage of calling the attention of the student who uses these cases as a means of studying our governmental system to the different details of different states and thus of encouraging an intelligent comparison of legal methods. For it is only through such a comparison that progress in administrative science is to be expected.

Professor Freund's work is thus to be welcomed as making accessible to the student of both law and government a mass of material in a logically arranged and well digested form which should greatly lighten the burden of both teacher and pupil.

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BY CARL HOOKSTADT.

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Attorney-General of the United States, Annual Report, 1910. 406p. 8° *Dept. of Justice.*

Contains: prosecutions under anti-trust law; frauds upon the revenue; matters arising under interstate commerce laws; recommendation of new legislation; public land matters; resumé of cases decided by supreme court.

Attorneys-General of the United States, Official opinions of, advising the heads o. departments in relation to their official duties. Edited by James A. Finch. v. 27f 1909. 691p. 8° *Dept. of Justice.* (H. doc. 1081.)

Bank Acceptances. By Lawrence Merton Jacobs. 1910. 20p. 8° *National Monetary Commission.* (S. doc. 569.) Paper, 5 cents.

Banking and Currency Systems of Canada, Interviews on, by a sub-committee of the *National Monetary Commission.* 1910. 219p. 8° (S. doc. 584.) Paper, 25 cents.

Banking in Russia, Austria-Hungary, The Netherlands, and Japan. 1911. 214p. 8° *National Monetary Commission.* (S. doc. 586.) Paper, 25 cents.

Bonding Government Employees, Rates for. Report from Joint Committee of Congress on rates of premium charged by surety companies for bonds of employees of the United States. 1911. 107p. 8° (S. rpt. 1260, H. rpt. 2267.)

Bureau of Labor, Bulletins of.

No. 89, July, 1910: Child labor legislation in Europe, C. W. A. Veditz; decisions of courts affecting labor.

No. 90, Sept., 1910: Fatal accidents in coal mining, by Frederick L. Hoffman; recent action relating to employers' liability and workmen's compensation by Lindley D. Clark; summary of foreign workmen's compensation acts; cost of employers' liability and workmen's compensation insurance; decisions of courts affecting labor.

No. 91, Nov., 1910: Working hours of working women in selected industries in Chicago, by Marie L. Obenauer; labor laws declared unconstitutional, by Lindley D. Clark; old age and invalidity pension laws of Germany, France, and Australia; review of labor legislation of 1910, by Lindley D. Clark; laws of various states relating to labor enacted since Jan. 1, 1910.

[1] All numbered documents refer to the 61st Congress unless otherwise specified. When prices are given, the documents in question may be obtained for the amount mentioned, from the Superintendent of Documents, Government Printing Office, Washington, D. C.

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Canadian Banking System, by Joseph French Johnson. 1910. 185p. 8°. *National Monetary Commission.* (S. doc. 583.) Paper, 30 cents.

Clayton-Bulwer Treaty [with Great Britain], History of Amendments proposed to. Submitted Dec. 14, 1901. 1911. 31p. 8°. *State dept.* (S. doc. 746.) Paper, 5 cents.

Clearing Houses, by James Graham Cannon. 1911. 335p. 8°. *National Monetary Commission.* (S. doc. 491).

Commercial Treaties and Conventions of the United States with France, Great Britain, Argentine Republic, Ecuador, Nicaragua, and Denmark for the Island of St. Croix. 1911. 63p. 8°. *State dept.* (S. doc. 831.)

Constitution Adopted by Arizona [at Constitutional Convention held at Phoenix, Ariz., from Oct. 10th to Dec. 9th, 1910]. 1911. 41p. 8°. (S. doc. 798.)

Constitution of New Mexico [adopted by Constitutional Convention held at Santa Fe, from Oct. 3rd to Nov. 21st, 1910], with vote on Constitition. 1911. 47p. 8°. (H. doc. 1369.)

Constitution for the Proposed State of New Mexico, Hearings on. Statements of the Hon. Wm. J.. Mills, Gov. of N. M., et al. *House of Rep. Committee on the Territories.* 1911. 392p. 8°.

Credit of Nations, by Francis W. Hirst editor of the *Economist,* and **The Trade Balance of the United States,** by George Paish, editor of the *Statist.* 1910. 213p. 8°. *National Monetary Commission.* (S. doc. 579.) Paper, 30 cents.

English Banking System, by Hartley Withers, Sir R. H. Inglis Palgrave, and others. 1910. 293p. 8°. *National Monetary Commission.* (S. doc. 492.) Paper, 30 cents.

Federal Statutes, Index Analysis of. (permanent and general law) 1789–1873. Together with a Table of Repeals and Amendments, by M. G. Beaman and A. K. McNamara.

Prepared under the direction of the Library of Congress as a preliminary volume of Scott and Beaman's Index Analysis of the Federal Statutes 1873–1907. 1911. 1146p. 4°.

First and Second Banks of the United States, by John Thom Holdsworth and Davis R. Dewey. 1910. 311p. 8°. *National Monetary Commission.* (S. doc. 571.) Paper, 30 cents.

Appendices: Act of incorporation; rules and regulations for conducting the business of the bank of the U. S.; the bill to continue the charter, and Jackson's veto.

Freight Rates by Carriers, Evidence taken by Interstate Commerce Commission in the matter of proposed advances in, Aug. to Dec. 1910. 10 volumes. *Interstate Commerce Commission.* (S. doc. 725.)

Immigrants Banks. 1910. 167p. 8°. *Immigration Commission.* (S. doc. 381.)

Immigration Situation in Canada. 1910. 218p. 8°. *Immigration Commission* (S. doc. 469.)

Appendix A: The Canadian immigration law and proposed amendments; U. S. immigration law; aims and methods of charitable organizations promoting emigration to Canada from the British Isles.

Independent Treasury of the United States and its relation to the banks of the country. By David Kinley. 1910. 370p. 8°. *National Monetary Commission.* (S. doc. 587.) Paper, 45 cents.

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International Conference of American States, Fourth. Held at Buenos Aires, July 12th to Aug. 30th, 1910. 1911. 296p. 8°. *State dept.* (S. doc. 744.)

International Law Situations with solutions and notes, 1910. *U. S. Naval War College.* Newport, R. I. 1911. 128p. 8°.

Situations: (1) Coaling within neutral jurisdiction. (2) Declaration of war. (3) Days of grace. (4) Pursuit of neutral blockade runner. (5) Influence of destination on contraband character. (6) Transfer to another flag.

Isthmian Canal Commission, Annual report of, 1910. 443p. 8°. maps. (H. doc. 1030.) Appendix O: Report of department of civil administration (pp. 363–407).

Lorimer Charges. Proceedings before the Committee on Privileges and Elections . . . in the matter of the investigation of certain charges against William Lorimer. 1910. 793. 8°. *Senate. Committee on Privileges and Elections.* (S. rpt. 942.)

Monetary Legislation, Suggested plan for. Submitted to the National Monetary Commission by the Hon. Nelson W. Aldrich. 1911. 20p. 8°. (S. doc. 784.) Paper, 5 cents.

Money, Banking and Loans, Laws of the U. S. concerning, 1778–1909. Compiled by A. T. Huntington, chief of Division of Loans and Currency and Robert J. Mawhinney, law clark, office of Solicitor of Treasury. 1910. 812p. 8°. *National Monetary Commission.* (S. doc. 580.)

Table of contents issued as part II, xxii p.

National Bank Currency, History of. By Alexander Dana Noyes. 1910. 20p. 8°. *National Monetary Commission.* (S. doc. 572.)

National Banking System, The Origin of. By Andrew McFarland Davis. 1910. 213p. 8°. *National Monetary Commission.* (S. doc. 582.)

North Atlantic Coast Fisheries Arbitration. Report by Chandler P. Anderson before the permanent court at the Hague. 1911. 15p. 8° *State dept.* (S. doc. 806.)

North Atlantic Fisheries Arbitration before the Hague Tribunal. 6 vols. Case of the United States, 1 v. Appendix to the Case of the United States, 2 v. Counter Case of the United States, 1 v. Appendix to the Counter Case of the U. S. 1 v. Argument of the United States, 1 v. *State dept.*

Pan American Union, Bulletin of. February, 1911.

Contains: The Capitols of America (pp. 205–222); trade and diplomacy between Latin America and the United States (pp. 240–252).

Paris Bourse, The History and Methods. By E. Vidal. 1910. 276p. 8°. *National Monetary Commission.* (S. doc. 573.) Paper, 30 cents.

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Philippine Assembly, Hearings on H. R. 32004 providing for the quadrennial election of. 1911. 13p. 8°. *House of Rep. Committee on Insular Affairs.*

Philippine Commission, Report of 1910. vii, 204p. 8°. *War dept.*

Reciprocity with Canada. Hearings on H. R. 32216. 1911. 342p. 8°. *House of Rep. Committee on Ways and Means.*

Reciprocity with Canada. Hearings on H. R. 32216 to promote. 1911. 332p. 8°. *Senate. Committee on Finance.* (S. doc. 834.)

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Reciprocity Treaty of 1854 with Canada, Extracts from Congressional debates on, together with messages of President transmitting the treaty to Congress. 1911. 185p. 8°. *House of Rep.* (H. doc. 1350.)

Revision of Laws—Judiciary Title. Report from Special Joint Committee on Revision and Codification of the laws of the United States, to accompany S. 7031. (in two parts.) part 1: notes on the sections. part 2: text. 1910. (S. rpt. 388.)

Existing law is printed in roman; amendments and new sections are printed in italics; sections from which any matter has been omitted or which have been formed by combining different sections or provisions of existing law are printed in brackets, except chapter V and section 114.

Savings-Bank Systems of Leading Countries, Notes on. 1910. 128p. 8°. *National Monetary Commission.* (S. doc. 658.) Paper, 25 cents.

Seasonal Variations in the Relative Demand for Money and Capital in the United States. A statistical study by Edwin Walter Kemmerer. 1910. 517p 4°. *National Monetary Commission.* (S. doc. 588.) Paper, 60 cents.

Social Sciences. Classification. 1910. 551p. 4°. *Library of Congress.* Price 65 cents.

Spanish Treaty Claims Commission, Final report. 1910. 16p. 8°.

State Banking Before the Civil War by Davis R. Dewey and **The Safety Fund Banking System in New York** 1829–1866 by Robert E. Chaddock. 1910. 388p. 8°. *National Monetary Commission.* (S. doc. 581.) Paper, 40 cents.

State Banks and Trust Companies since the passage of the National Bank Act. By George E. Barnett. 1911. 366p. 8°. *National Monetary Commission.* (S. doc. 659.) Paper, 30 cents.

Part 1: State bank and trust company legislation. Part 2: The growth of state banks and trust companies. Appendix: The insurance of bank deposits in the West, by Thornton Cooke.

Statistics for the United States 1867–1909. Compiled by A. Piatt Andrew. 1910. 282p. 4° *National Monetary Commission.* (S. doc. 570.)

Tariff Acts passed by the Congress of the United States from 1789 to 1909 including all acts, resolutions and proclamations modifying or changing those acts. 1909. 1040p. 4°. (H. doc. 671.) *Joint Committee on Printing.*

Tariffs of 1897 and 1909 in parallel columns, showing the classification, rates of duty, and sections of the Act of July 24, 1897 (Dingley Tariff) and the Act of Aug. 5, 1909 (Payne Tariff) based on the paragraph order of the Act of 1909. 1910. 254p. 8°. *House of Rep. Committee on Ways and Means.* (H. doc. 948.)

Teachers' Pension Laws in the United States and Europe. Data presented by Mr. Gallinger. 1911. 53p. 8°. (S. doc. 823.)

Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and other powers, 1776–1909. Two vols. Compiled by William M. Malloy. 1910. xxvi, 2491p. 8°. *Senate. Committee on Foreign Affairs.* (S. doc. 357.)

Contains: Treaties, conventions, international acts, important protocols and agreements by exchange of notes, whether in force or not, to which the United States has been a party from 1776 to and including 1909, together with other material pertaining to treaties, such as awards, a reference to every decision of the federal courts affecting treaties, a chronological list of treaties by countries, etc.

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Treaty Between U. S. and Russia concluded at St. Petersburg, Dec. 18, 1832, Termination of. Hearings on. 1911. 34p. 8°. *Senate. Committee on Foreign Affairs.*

Women and Child Wage-earners in the United States, Report on Condition of. (report to consist of 19 vols.) 1911. *Commissioner of Labor.* (S. doc. 645.)

v. 1: Cotton textile industry. v. 2: Men's ready-made clothing. v. 3: Glass industry.

Workmen's Insurance and Compensation Systems in Europe. 24th annual report of the *Commissioner of Labor,* 1909. 2 vols. 1911. (H. doc. 132.)

v. 1: Austria, Belgium, Denmark, France, and Germany.

GREAT BRITAIN.[1]

Canada and the West Indies, Report of the royal commission on trade relations between. 1910. (cd. 5369) Minutes of evidence taken in the West Indies, Canada, and London. (cd. 4991, 5370, 5371, respectively.)

Canada. Papers relating to a proposed commercial arrangement between Canada and the United States. 1911. 8p. fol. *Colonial Office.* (cd. 5512.)

Canals and Waterways, Royal commission on. Reports on the water supplies of canal routes. 1910. xvii, 241p. maps. fol. (5447 cd.) vol. 10.

Ceylon. Further correspondence relating to the constitution of the Ceylon legislative council. 1910. 68p. fol. *Colonial Office.* (cd. 5427.)

Colonial Secretary of State advises reduction in number of European representatives, change in electoral franchise and method of nomination.

Church of England and other religious bodies in Wales and Monmouthshire, Royal commission on. 1910. v. 1. (5432 cd.) report. (cd. 5432–I) appendices to v. 1. v. 2–4 (cd. 5433, 5434, 5435) minutes of evidence. v. 5–7. (cd. 5436, 5437, 5438) appendices and statistics. v. 8. (5439 cd.) indexes.

Collective Agreements between employers and workpeople, Report on. 1910. xxxviii, 502p. 8°. *Board of Trade. Labour dept.* (cd. 5366.)

Contains: Record of 1696 agreements, affecting 2,400,000 people. Deals with wages, sliding scales, hours of labour, conciliation and arbitration. Appendices give texts of agreements, lists of awards and settlements, etc.

Commercial Travellers (British), Memorandum summarizing the regulations in force in British colonies and in foreign countries with regard to. 1910. 80p. fol. (cd. 5189.) *Board of Trade.*

Earnings and Hours Enquiry. Report of an enquiry into the earnings and hours of labour of workpeople in the United Kingdom. Vol. V. Agriculture in 1907. Appendix C contains list of principal official publications relating to wages and hours of labour. 1910. xxvi, 58p. fol. *Board of Trade.* (cd. 5460.)

This is 5th of a series. Previous reports dealt with textile, clothing, building and woodworking trades, and public utility services.

Electoral Systems, Report of royal commission. 1910. (cd. 5163). Minutes of evidence (cd. 5352).

Contains: Characterization of the present system. Classification of proposed reforms as follows. (1) redistribution—unequal electoral areas; (2) absolute majority systems—split vote to be superseded by alternative vote; (3) minority and propor-

[1] Cd. refers to papers presented to Parliament by command.

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tional representation. Recommendations: Alternative vote in cases of more than two candidates for one seat; of the various proportional representation schemes the transferable vote would have best chance of acceptance but unable to recommend its adoption in existing circumstances for election to the House of Commons.

Friendly Societies, Workmen's Compensation Schemes, Industrial and Provident Societies, and Trade Unions. Reports of the Chief Registrar of Friendly Societies, for 1909. Part A. 1910. 193p. fol. (H. of C. paper, No. 171).

Appendices: A, disputes settled by registrar. E, law cases. F, Friendly societies in colonies and foreign countries. G, list of societies registered.

Foreign Labour Statistics, 4th Abstract of. 1910. lxv, 462p. 8°. *Board of Trade. Labour dept.* (cd. 5415).

Goods Bearing False Indication of Origin, Reports from H. M. representatives abroad on the laws in force in the principal foreign countries to prevent the sale or importation of. 1911. 204p. 8°. *Board of Trade.* (cd. 5531).

Judicial Statistics, England and Wales, for 1909. Part I: Criminal statistics, (cd. 5473). Part II: Civil statistics, (cd. 5501). *Home dept.*

Judicial Statistics of Scotland for 1909, Report of. 1910. 161p. fol. (cd. 5417).

Land Transfer Acts. Second and final report of royal commission. 1911. vii, 56p. fol. (cd.5483).

Contains: History of land transfer; working of land transfer acts; recommendations.

Local Government Board, 39th Annual report for 1909–10. Part I: Administration of the poor law; the unemployed workmen act; the old age pensions act. (cd. 5260). Part II: County Council administration; public health and local administration; local taxation and valuation. (cd. 5275).

Local Legislation, Special report from select committee on, together with the proceedings of the committee. 1910. xxxvip. fol. (H. of C. paper, No. 323).

Considered twelve House of Commons bills on local legislation, including general powers of London County Council.

London Traffic Report. Report of the London traffic branch of the *Board of Trade.* 1910. 1911. vi, 195p. maps, fol. (cd. 5472).

North Sea Fishery Investigations. Reports of the delegates attending the meetings of the International Council for the Exploration of the Sea, in 1907, 1908, and 1909, and reports relating thereto. 1910. 192p. fol. (cd. 5032).

Outdoor Relief, Report of the departmental committee relating to the administration of. 1911. 62p. fol. *Local Government board.* (cd. 5525).

Appendices: Draft relief regulation order; comparison of outdoor relief orders now in force.

Parliamentary Election Expenses. Return of charges made to candidates at the general election of 1910. 77p. fol. (H. of C. paper, No. 299).

Poor Laws and Relief of Distress, Royal Commission on.

Appendix vol. XXV. (cd. 5077). Statistics relating to England and Wales.

Appendix vol. XXI. (cd. 5074). Report on an inquiry in certain unions into cases of refusal of out-relief. By Miss G. Harlock.

Appendix vol. XXIII. (cd. 5075). Condition of the children who are in receipt of the various forms of poor law relief in certain parishes in Scotland. By C. T. Parsons.

Appendix vol. XXIV. (cd. 5076). Physical condition of able-bodied male inmates

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of certain Scottish poorhouses, and English workhouses and labour yards. By C. T. Parsons.

Appendix vol. XXXIII. (cd. 5441). Foreign and colonial systems of poor relief with a memorandum on the relief of famines in India. Summary: classification of poor law systems; the right to relief; conditions attaching to relief; the poor law area; the relief authority; coöperation of official relief and voluntary agencies; classes of poor relieved and methods of relief; poor law administration in large towns; finance of poor relief; schemes of social insurance against sickness, old age, invalidity, unemployment, and accident.

Public Works in Ireland, 78th annual report of commissioners, for 1909–10. (cd. 5301). Report deals with public works and buildings, including ancient and national monuments; railways and tramways, loans, etc. Decennial index.

Railway Accidents. Summary of accidents and casualties during the three months ending Sept. 30th, 1910. 1911. 116p. fol. *Board of Trade.* (cd. 5493).

Railways, Canals, Tramways, etc., Report by *Board of Trade* upon all the bills and provisional orders of session 1911 relating to. 1911. 48p. fol. (cd. 5536).

Registration of Title in Scotland, Report of Royal Commission on. (cd. 5316). Minutes of evidence (cd. 5357).

Sea Fisheries, Annual report of proceedings under acts relating to, for 1908. *Board of Agriculture and Fisheries.* (cd. 5416). Appendices: Fisheries of Great Britain and foreign countries. Charts showing fishing regions of Europe.

Tramways and Light Railways (Street and Road). Return showing the amount of capital; the length of line authorized, and the length open for public traffic; receipts, expenditures, and appropriations; the number of miles run by cars; the number of passengers conveyed; and the quantity of electrical energy used. 1910. 55p. fol. (H. of C. paper, No. 293).

Wages in the United Kingdom, Standard time rates of, at Oct. 1910. iv. 126p. fol. *Board of Trade. Labour dept.* (cd. 5459).

Appendix: Classified statistics relating to wages and hours of labour.

Workmen's Compensation, 1909. Statistics of compensation and of legal proceedings under the Workmen's Compensation Act and the Employers' Liability Act. 1910. 70p. fol. *Home dept.* (cd. 5386).

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Peru and Ecuador. Limites entre el Ecuador y el Perú. Memorándum para el *ministerio de relaciones exteriores* de la República de Bolivia por N. Clemente Ponce, E. E. y ministro plenipotenciaro del Ecuador. La Paz. 1910. 90p. 8°.

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Cuadro Sinoptico Informativo de la Administracion del Señor general don Porfirio Diaz, Presidente de la República, hasta 1909. Dr. Antonio Peñafiel. México. 1910. 107p. 4°. *Secretaria de fomento, colonizacion e industria.*

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